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# PENSION BULLETIN

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## GENERAL ANNOUNCEMENTS

### Important Notice to Administrators

Please note the following information concerning the filing requirements of your Annual Information Return (AIR) and your Pension Fund Financial Statement. Both of these documents are required to be filed under the *Pension Benefits Act*, R.S.O. 1990.

### Annual Information Return

The AIR form is mailed out by the Financial Services Commission of Ontario (FSCO) 3 months after the fiscal year end of your pension plan. The AIR must be completed and returned with the required annual filing fee prior to the due date specified on page 5 of the AIR form.

**Please submit your completed AIR for processing to:**

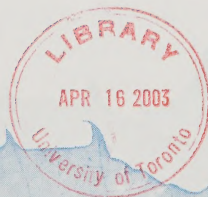
**Ministry of Finance  
Revenue Operations and Client Services Branch  
P.O. Box 620  
33 King Street West  
Oshawa ON L1H 8E9**

### Pension Fund Financial Statements

Section 76 of Regulation 909, R.R.O. 1990, as amended, contains the requirements for filing the annual Financial Statements for the pension fund or plan in detail. In addition to filing the Financial Statements, if at the end of the fiscal year end of a pension plan, the plan has \$3,000,000 or more in assets calculated at market value, the administrator must ALSO file an auditor's report in respect of the financial statement.

**Please submit your completed Financial Statements directly to the Financial Services Commission of Ontario at:**

**Financial Services Commission of Ontario  
Pension Plans Branch  
5160 Yonge Street, 4th Floor  
P.O. Box 85  
North York ON M2N 6L9**



**To avoid delays in processing, please send your  
Financial Statements and the AIR to the correct address.**



## Introduction of Bill 198

On December 4, 2002, the Minister announced that the government received unanimous consent to withdraw the amendments to the PBA from Bill 198. The Minister said in a media release:

"This government has made a clear commitment to further consultations. We are committed to ongoing efforts with our stakeholders and determining the best steps to address the pension issues." The Minister also stated that the government is committed to working with stakeholders to create an expert committee to examine how Ontario should address these issues.

On October 30, 2002, the Hon. Janet Ecker, Minister of Finance, introduced Bill 198, "Keeping the Promise for a Strong Economy Act (Budget Measures), 2002". Part XXV contained amendments to the Pension Benefits Act (PBA) that would, if enacted, have amended the rules regarding the payment of surplus from pension plans, partial wind ups, contribution holidays, and refunds to employers from defined contribution plans in certain situations. In addition, the Bill provided for the payment of pension benefits of members who could not be found when a plan fully wound up in a trust unit administered by the Financial Services Commission of Ontario.



## Pension Division Staff Changes

**Roger Smithies** has been seconded to act as Manager of the Pension and Income Security Policy Branch of the Ministry of Finance. **Jerry Williams** has assumed the position of Acting Manager of the Pension Policy Unit. **Fatima Vieira** joined the Pension Policy Unit as a Policy Analyst.

## Contacts for Plan Specific Enquiries

Contact Name	Title	Phone Number	Allocation Alpha Range
Jaan Pringi	Sr. Pension Officer	(416) 226-7826	
Gulnar Chandani	Pension Officer	(416) 226-7770	#s-Associated
Penny McIlraith	Pension Officer	(416) 226-7822	Associates-Bulk
Irene Mook-Sang	Pension Officer	(416) 226-7824	Bull-Cem
Stanley Chan	Pension Officer	(416) 226-7829	Cen-Cz
Kathy Carmosino	Pension Officer	(416) 226-7823	I-King
Preethi Anthonypillai	Pension Officer	(416) 226-7812	Kinh-Mark
Gino Marandola	Sr. Pension Officer	(416) 226-7820	
Calvin Andrews	Pension Officer	(416) 226-7768	Gko-H
Anna Vani	Pension Officer	(416) 226-7833	D-Em
John Graham	Pension Officer	(416) 226-7774	Marl-Nes
Julina Lam	Pension Officer	(416) 226-7815	Net-Pep
Anna Vani	Pension Officer	(416) 226-7833	Peq-Rob
Rosemin Jiwa Jutha	Sr. Pension Officer	(416) 226-7816	
John Khing Shan	Pension Officer	(416) 590-7237	En-Gkn
Peter Dunlop	Pension Officer	(416) 226-7860	Roc-Sons
Hae-Jin Kim	Pension Officer	(416) 226-7876	Sont-The Drop
David Allan	Pension Officer	(416) 226-7803	The Droq-Unicorp
Mark Lucyk	Pension Officer	(416) 226-7781	Unicorp-Z
Robin Gray	Pension Officer	(416) 226-7855	



## FSCO Pension Advisory Committees — Membership as at November 2002

### *Accounting and Assurance Advisory Committee*

Besler, Jason  
Eigl, Charlie **(Chair)**  
French, Mike  
Racanelli, Nick  
Wade, Jack

Cassidy, Jim  
Finn, Mary Ann  
Koehli, Ron  
Turner, Eric  
Walker, Albert

### *Actuarial Advisory Committee*

Cohen, Lorne **(Vice-Chair)**  
Figueiredo, Karen **(Chair)**  
Hutchinson, Laurie  
Morrison, Dan  
Pitcher, Clare  
Rosenblat, Rob

DiRisio, Wendy  
Hart, David  
Levy, Thomas  
Peng, Peter  
Robertson, Marcus

### *Investment Advisory Committee*

Bertram, Bob  
Grantier, Bruce  
Mercier, Eileen  
Pennal, Peter  
Pond, Robin  
With, Alf **(Chair)**

Franks, Jim  
Kyle, Claire  
Mills, Daniel  
Phelps, Tom **(Vice-Chair)**  
Schaefer, Klaus

### *Legal Advisory Committee*

Forge, Jeremy  
Healy, Priscilla  
Nachshen, Gary **(Chair)**  
Picard, Mary  
Whiston, Bethune

Gold, Murray **(Vice-Chair)**  
Lokan, Andrew  
O'Reilly, Hugh  
Rienzo, Doug



## HEARINGS/COURT MATTERS

The information set out below is current to November 26, 2002.

### Enforcement Matters

#### i. Canadian Corporation Creation Center (CCCC)

Charges under the *Pension Benefits Act* (the "Act") were laid against the CCCC Pension Plan administrator, the individual trustees, CCCC and related companies on September 12, 2001. The charges relate to a scheme whereby locked in accounts were assigned to the defendant companies in return for the promise to extend a loan to the locked in account holder. A first appearance occurred on October 9, 2001. A second appearance occurred on December 6, 2001, at which time one of the individual trustees pleaded guilty to a charge of failing to administer the CCCC Pension Plan in accordance with the Act. A fine of \$5000 inclusive of victim surcharge was levied. The charges against some of the defendants were withdrawn on June 17, 2002. The final set of related charges against Sandra Weinstein was withdrawn on August 23, 2002.

#### ii. Club 300 Bowl (BC)

Charges were laid against the corporation and both directors and officers for failing to pay funds deducted from employees' pay into the pension plan, failing to pay the required employer's contributions into the pension plan, failing to file Annual Information Returns and Financial Statements for fiscal years 1995 to 1998 and failing to file a wind-up report. The first appearance for the charges occurred on July 24, 2002. The fourth court appearance is December 4, 2002.

#### iii. Dubreuil Forest Products Limited

Charges were laid for failing to file a financial statement. The first appearance for the charges occurred on March 5, 2002. The matter was subsequently adjourned to August 27, 2002. On August 27, 2002, Dubreuil Forest Products pleaded guilty to both counts on the information, convictions were entered and a fine of \$10,000.00 was imposed.

#### iv. Chris Bain

Microcolor Dispersions Inc. ("Microcolor") failed to remit both employer and employee contributions to its pension plan in breach of the Act. Both the Company and its then part owner/director Chris Bain, were charged under the Act. Bain was charged in his personal capacity with being a director who had acquiesced or permitted Microcolor to breach the Act. Both Bain and the company were convicted. A probation order was made against Bain requiring him to make additional payments to the pension fund. He failed to comply with the order and was charged with breach of the probation order. The trial is scheduled for January 27, 2003.

#### v. Microcolor Dispersion Inc.

Microcolor was charged and convicted of failing to remit both employer and employee contributions into its pension plan, in respect of a certain period, in breach of the Act. The required contributions were not made and the company has been charged again in respect of a later period. A judicial pre-trial is scheduled for January 13, 2003.

#### vi. John Parker

John Parker is a director of Microcolor. He has been charged in his personal capacity with permitting or acquiescing in Microcolor's failure to remit the employer and employees' contributions into the pension plan. The next appearance will take place on November 8, 2002.





### **vii. Mimik Industries Inc.**

Charges were laid against the employer, Mimik Industries Inc., and against an officer of the employer for failing to remit the required contributions to the pension plan. The charges are based on the employer's failure to pay the entire amount of arrears due under a probation order dated October 9, 1997 — approximately \$31,500 is outstanding. A judicial pre-trial is scheduled for February 5, 2003.

### **viii. Rellok Ltd.**

Charges were laid for failing to pay the filing fees for annual information return for two consecutive years. The first appearance was on June 28, 2002, when the matter was adjourned to July 30, 2002. On July 30, 2002, the matter was adjourned to September 27, 2002. On September 27, 2002, Rellok Ltd. pleaded guilty to both counts on the information, convictions were entered on both counts and Rellok was fined \$2,000.00.

## **Court Matters**

### **i. Monsanto Canada Inc.**

On April 29 and 30, 2002, the Court of Appeal heard the appeal of the Divisional Court's decision brought by Monsanto Canada Inc., the Association of Canadian Pension Management, and the National Trust Company. The issues are whether the Act compels a distribution of surplus on partial wind up and whether the doctrine of legitimate expectation applies. The Divisional Court had unanimously allowed the Superintendent's appeal of the Financial Services Tribunal's majority decision, which held that the Act does not compel a distribution of surplus on partial wind up and that the doctrine of legitimate expectation applied.

On November 22, 2002, the Court of Appeal unanimously dismissed the appeal, holding that subsection 70(6) of the PBA requires a distribution of surplus on partial wind up and that the doctrine of legitimate expectation does not apply.

### **ii. Ontario Teachers' Pension Plan (Anne Stairs)**

On May 24, 2002, the Divisional Court heard an appeal by Anne Stairs against the Financial Services Tribunal's decision that directed the Superintendent to refuse to carry out a proposal to order the Teachers' Pension Plan Board to pay certain survivor benefits to Ms. Stairs, a former spouse of the plan member who died before reaching retirement age. The Tribunal held that a separation agreement awarding Ms. Stairs an interest in the plan member's pension benefits (including death benefits) could not be enforced under the Act, as death benefits were not property and the plan member's spouse at the time of his death was not a party to the separation agreement.

The Divisional Court released its decision on June 18, 2002. The appeal was allowed. The Court found that death benefits were property that could be assigned and that subsection 48(13) of the Act clearly gave Ms. Stairs an interest in the death benefits. The Divisional Court held that the standard of review is reasonableness, but the standard is correctness when the Tribunal interprets family law or the common law.

The parties returned to argue the amount of Ms. Stairs entitlement before the Divisional Court on September 3, 2002. The court reserved its decision.



## **SUPERINTENDENT OF FINANCIAL SERVICES**

### **Appointment of Administrators — Section 71 of the PBA**

1. Thompson Actuarial as the Administrator of the Commercial Aluminum (1993) Limited Hourly Employees Pension Plan (Registration No. 1010289), effective immediately.  
DATED at Toronto, Ontario, this 4th day of October, 2002.
2. PricewaterhouseCoopers as the Administrator of the Pension Plan for Non-Bargaining Salaried Employees of Trailmobile Trailer Canada Ltd. (Registration No. 337006), effective immediately.  
DATED at Toronto, Ontario, this 1st day of October, 2002.
3. Maritime Life Assurance Company as the Administrator of the Registered Pension Plan for Cunningham Foundry, a Division Of Quint Industries Inc. (Registration No. 0432450), effective immediately.  
DATED at Toronto, Ontario, this 11th day of September, 2002.
4. London Life Insurance Company as the Administrator of the Employee Retirement Plan for the Employees of Piccione Machine Tool & Gear Mfg. Ltd. (Registration No. 582080), effective immediately.  
DATED at Toronto, Ontario, this 10th day of September, 2002.
5. Morneau Sobeco as the Administrator of the Algoma Steel Inc. Salaried Pension Plan for Employees in Canada (Registration No. 335810), effective immediately.  
DATED at Toronto, Ontario, this 6th day of September, 2002.
6. Morneau Sobeco as the Administrator of the Non-Contributory Pension Plan Covering Hourly Paid Bargaining Unit Employees of Algoma Steel Inc. (Registration No. 335802), effective immediately.  
DATED at Toronto, Ontario, this 6th day of September, 2002.
7. Morneau Sobeco as the Administrator of the Pension Plan for Employees of General Publishing Co. Limited (Registration No. 0563148), effective immediately.  
DATED at Toronto, Ontario, this 5th day of September, 2002.
8. Morneau Sobeco as the Administrator of the Pension Plan For Salaried Employees of the Real Estate Division of Olympia & York Developments (Registration No. 570754), effective immediately.  
DATED at Toronto, Ontario, this 13th day of August, 2002.
9. Mackenzie Financial as the Administrator of the Registered Pension Plan for the Employees of P.R. Manufacturing Incorporated (Registration No. 1055029), effective immediately.  
DATED at Toronto, Ontario, this 17th day of July, 2002.
10. Clarica Financial as the Administrator of the Registered Pension Plan for Employees of Superpac Acquisitions Inc. (Registration No. 1054071), effective immediately.  
DATED at Toronto, Ontario, this 17th day of July, 2002.





11. Manulife Financial as the Administrator of the Pension Plan for OSF Inc. (Registration No. 594366), effective immediately.  
DATED at Toronto, Ontario, this 16th day of July, 2002.
12. Morneau Sobeco as the Administrator of the Peterborough Paper Converters Pension Plan (Registration No. 283358), effective immediately.  
DATED at Toronto, Ontario, this 16th day of July, 2002.
13. Standard Life Assurance Company as the Administrator of the Pension Plan for the Employees of Danbel Inc. (Registration No. 1047687), effective immediately.  
DATED at Toronto, Ontario, this 3rd day of July, 2002.
14. Canada Life Assurance Company as the Administrator of the Pension Plan for Salaried Employees of Mosler Canada Inc. (Registration No. 941732), effective immediately.  
DATED at Toronto, Ontario, this 23rd day of May, 2002.



## Notices of Proposal to Make an Order

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act, consenting to a payment out of the **Retirement Plan for Certain Unionized Employees of Beta Brands Limited, Registration No. 1050210**;

**TO:** **Beta Brands Limited**

**Attention:** Mr. George Harrison  
CFO & Secretary  
1156 Dundas Street East  
London ON N5W 5Y4

### NOTICE OF PROPOSAL

**I PROPOSE TO MAKE AN ORDER** under s. 78(4) of the Act, consenting to the payment out of the Retirement Plan for Certain Unionized Employees of Beta Brands Limited, Registration No. 1050210 (the "Plan"), to Beta Brands Limited in the amount of \$17,376.10 as at June 30, 2001, plus interest at the fund rate of return thereon to the date of payment.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Beta Brands Limited is the employer as defined in the Plan (the "Employer").
2. As a result of an advance contribution of \$50,000 to the Plan while an actuarial valuation was prepared, the 1998 employer current service cost and special payments made in December 1999 did not take into account

the advance contribution and an overpayment resulted. The advance contributions, after taking into account interest owed to the fund in respect of late contribution payments, resulted in an overpayment of \$17,376.10 as at June 30, 2001.

3. Evidence of the overpayments to the fund has been submitted to the Financial Services Commission of Ontario.
4. There were no member submissions made about the repayment.
5. The application appears to comply with section 78(4) of the Act.
6. Such further and other reasons as come to my attention.

In accordance with subsection 105.(1) of the Act, an extension of the time limit under subsection 78(4) has been given.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

**Attn:** The Registrar

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 19th day of June, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division

cc: Mr. Eric Poirier,  
Mercer Human Resource Consulting  
Mr. Michael E. Labute,  
Mercer Human Resource Consulting





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act, consenting to a payment out of the **Pension Plan for Salaried Union Employees of BICC Phillips Inc. (Located at Brockville, Ontario), Registration No. 370205;**

**TO:** **BICC Canada Inc.**  
c/o Balfour Beatty Construction,  
Inc.

**Attention:** Ms. Joanne Bonfiglio  
254 South Main Street  
New City NY 10956 USA

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(4) of the Act, consenting to the payment out of the Pension Plan for Salaried Union Employees of BICC Phillips Inc. (Located at Brockville, Ontario), Registration No. 370205 (the "Plan"), to BICC Cables Canada Inc. in the amount of \$23,735 as at August 22, 2000, adjusted for expenses, plus investment earnings thereon to the date of payment.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. BICC Canada Inc. is the employer as defined in the Plan (the "Employer"), as amended by the Articles of Amalgamation at January 1, 2001.
2. As a result of the purchase of annuities in 1999 for the remaining members of the Plan, the company was required to make an additional contribution to the Plan to fund the cost of the annuity purchase. After the

insurer had collected all the required documentation and completed its administrative work, it was ascertained that the amount the company paid the insurer exceeded the final cost of the annuities. The insurance company refunded the excess amount plus accumulated interest to the trust fund of the Plan in 2000. The company is making an application for a refund from the trust fund of the excess amount.

3. Evidence of the overpayment to the fund in the form of a copy of the initial annuity quote summary from Industrial Alliance Life Insurance Company and the final reconciliation from Industrial Alliance, indicating the refund amount plus interest as at August 22, 2000, has been submitted to the Financial Services Commission of Ontario.
5. There were three member submissions made about the repayment in response to the notice of the application provided to them by the company, none of which contained substantive submissions regarding the application or Act or the Plan documents.
6. The application appears to comply with section 78(4) of the Act.
7. Such further and other reasons as come to my attention.

In accordance with subsection 105.(1) of the Act, an extension of the time limit under subsection 78(4) has been given.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

**Attn:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 24th day of June, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division  
cc: Mr. Duncan Richardson, Mercer Human  
Resource Consulting  
Mr. Willard M. Burke  
Mr. Donald W. Conlin  
Mr. Arthur W. Lane

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c.28;

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c.28, respecting the **Pension Plan for the Employees of Kaufman of Collingwood, The Furniture Division of William H. Kaufman Inc., Registration Number 0340091 (the "Pension Plan")**;

**TO:** **The Standard Life Assurance Company**

1245 Sherbrooke Street West  
Montreal PQ H3G 1G3

**Attention:** Jean-Claude Lebel  
Pension Actuary

**Administrator of the Pension Plan for the Employees of Kaufman of Collingwood, The Furniture Division of William H. Kaufman Inc.**

**AND TO:** **Kaufman of Collingwood, The Furniture Division of William H. Kaufman Inc.**

201 Balsalm Street  
Collingwood ON L9Y 3Y7

**Attention:** Barry Knox  
Controller

**Employer**

**AND TO:** **Ernst & Young Inc.**

Ernst & Young Tower  
P.O. Box 251, 222 Bay Street  
Toronto-Dominion Centre  
Toronto ON M5K 1J7

**Attention:** Jorden Sleeth

**Receiver and Trustee in Bankruptcy for William H. Kaufman Inc.**

### **NOTICE OF PROPOSAL TO MAKE AN ORDER**

**I PROPOSE TO MAKE AN ORDER** that the Pension Plan for the Employees of Kaufman of Collingwood, The Furniture Division of William H. Kaufman Inc., No. 0340349, be wound up in full, effective July 14, 2000.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act").

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. There was a cessation or suspension or employer contributions to the pension fund.
2. A significant number of the members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result the reorganization of the business of the employer.
3. The employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada).
4. A significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
5. All or a significant portion of the business carried on by the employer at a specific location is discontinued.





6. All or part of the employer's business or all or part of the assets of the employer's business are sold, assigned or otherwise disposed of and the person who acquires the business or assets does not provide a pension plan for the members of the employer's pension plan who become employees of the person.
7. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 25th day of June, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c.28;

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c.28, respecting the **Pension Plan for the Employees of Kaufman Footwear, Division of William H. Kaufman Inc., Registration Number 0340349 (the "Pension Plan")**

**TO:** **The Standard Life Assurance Company**  
1245 Sherbrooke Street West  
Montreal PQ H3G 1G3

**Attention:** Jean-Claude Lebel  
Pension Actuary

**Administrator of the Pension Plan for the Employees of Kaufman Footwear, Division of William H. Kaufman Inc.**

**AND TO:** **Kaufman Footwear, Division of William H. Kaufman Inc.**  
P.O. Box 9005  
410 King Street West  
Kitchener ON N2G 4J8

**Attention:** S.I. Snyder  
Vice President, Finance  
**Employer**

**AND TO:** **Ernst & Young Inc.**  
Ernst & Young Tower  
P.O. Box 251, 222 Bay Street  
Toronto-Dominion Centre  
Toronto ON M5K 1J7

**Attention:** Jorden Sleeth

**Receiver and Trustee in Bankruptcy for William H. Kaufman Inc.**

**AND TO:** **United Steelworkers of America**  
89 Dawson Road  
Guelph ON N1H 1B1

**Attention:** Ken Dawson

**NOTICE OF PROPOSAL TO MAKE AN ORDER**

**I PROPOSE TO MAKE AN ORDER** that the Pension Plan for the Employees of Kaufman Footwear, Division of William H. Kaufman Inc., No. 0340349, be wound up in full effective July 21, 2000.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act").

**I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. There was a cessation or suspension or employer contributions to the pension fund.
2. A significant number of the members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
3. The employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada).
4. A significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.



5. All or a significant portion of the business carried on by the employer at a specific location is discontinued.
6. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL, IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 25th day of June, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division

<sup>1</sup>NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act, consenting to a payment out of the **Pension Plan for Hourly Employees of BICC Phillips Inc. (Located at its Brockville Factory)**, **Registration No. 293753**;

**TO:** **BICC Canada Inc.**  
c/o Balfour Beatty Construction,  
Inc.

**Attention:** Ms. Joanne Bonfiglio  
254 South Main Street  
New City NY 10956 USA

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(4) of the Act, consenting to the payment out of the Pension Plan for Hourly Employees of BICC Phillips Inc. (Located at its Brockville Factory), Registration No. 293753 (the "Plan"), to BICC Canada Inc. in the amount of \$782,818 as at August 22, 2000, adjusted for expenses, plus investment earnings thereon to the date of payment.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. BICC Canada Inc. is the employer as defined in the Plan (the "Employer"), as amended by the Articles of Amalgamation at January 1, 2001.
2. As a result of the purchase of annuities in 1999 for the remaining members of the Plan, the company was required to make an

additional contribution to the Plan to fund the cost of the annuity purchase. After the insurer had collected all the required documentation and completed its administrative work, it was ascertained that the amount the company paid the insurer exceeded the final cost of the annuities. The insurance company refunded the excess amount plus accumulated interest to the trust fund of the Plan in 2000. The company is making an application for a refund from the trust fund of the excess amount.

3. Evidence of the overpayment to the fund in the form of a copy of the initial annuity quote summary from Industrial Alliance Life Insurance Company and the final reconciliation from Industrial Alliance, indicating the refund amount plus interest as at August 22, 2000, has been submitted to the Financial Services Commission of Ontario.
4. There were ten member submissions made about the repayment in response to the notice of the application provided to them by the company, none of which contained substantive submissions regarding the application or Act or the Plan documents.
5. The application appears to comply with section 78(4) of the Act.
6. Such further and other reasons as come to my attention.

In accordance with subsection 105.(1) of the Act, an extension of the time limit under subsection 78(4) has been given.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

**Attn:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 26th day of June, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division

cc: Mr. Duncan Richardson, Mercer Human  
Resource Consulting  
Mr. William Greenham  
Mr. Roger Eyre  
Mr. Malcolm Blair  
Mr. Giovanni Hrelia  
Mr. Robert C. Andress  
Mr. W.G. Haggart  
Mr. Earl G. Mott  
Mr. J. Richard Gill  
Mr. Arthur W. Lane  
Mr. Donald W. Conlin

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act, consenting to a payment out of the **Boehringer Ingelheim (Canada) Ltd./Ltée Employees' Pension Plan**, Registration No. 356162;

**TO:** **Boehringer Ingelheim (Canada) Ltd./Ltée**

**Attention:** Louise Muller  
Manager, Human Resources  
5180 South Service Road  
Burlington ON L7L 5H4

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(4) of the Act, consenting to the payment out of the **Boehringer Ingelheim (Canada) Ltd./Ltée Employees' Pension Plan**, Registration No. 356162 (the "Plan"), to a refund of employer contributions in the amount of \$1,351,669.22 as at January 16, 2002.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. **Boehringer Ingelheim (Canada) Ltd./Ltée** is the employer as defined in the Plan (the "Employer").
2. As a result of the delay caused by Royal Trust to effect the payments from the fund in a timely manner, employer contributions for 2000, 2001 and January 2002 were made

to the fund by the employer rather than from the fund as a contribution holiday out of surplus.

3. Evidence of the overpayment to the fund for 2000, 2001 and January 2002 has been submitted to the Financial Services Commission of Ontario.
4. There were no member submissions made about the repayment.
5. The application appears to comply with section 78(4) of the Act.
6. Such further and other reasons as come to my attention.

In accordance with subsection 105.(1) of the Act, an extension of the time limit under subsection 78(4) has been given.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

**Attn:** The Registrar

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.





**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 2nd day of July, 2002.

K. David Gordon

Deputy Superintendent, Pension Division

cc: Ms. Renate Leis, Buck Consultants Limited





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **AFG Industries Ltd. Salaried Pension Plan, Registration No. 1070853;**

**TO:** **AFG Industries Ltd.**  
1400 Lincoln Street  
Kingsport TN 37660 U.S.A.

**Attention:** Steven E. Kramer  
Vice President, Human Resources  
and General Counsel

**Applicant and Employer**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the Act, consenting to the payment out of the AFG Industries Ltd. Salaried Pension Plan, Registration No. 1070853 (the "Plan"), to AFG Industries Ltd. in the amount of \$14,303,441 as at January 10, 2001, plus earnings thereon to the date of payment.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that all the consenting members' and former members' entitlements from the Plan, have been first transferred out and paid to the members or otherwise provided for.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. AFG Industries Ltd. is the employer as defined in the Plan (the "Employer").

2. The Plan was partially wound up, effective January 10, 2001.
3. As at January 10, 2001, the surplus in the Plan was estimated at \$33,718,817.
4. The Plan provides for payment of surplus to the Employer on the partial wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and on behalf of the 100% of the consenters, the surplus in the Plan at the date of payment, after deduction of wind up expenses, is to be distributed:
  - a) approximately 42.42% to the Employer; and
  - b) approximately 42.43% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of approximately 42.42% of the surplus in the Plan.
7. The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

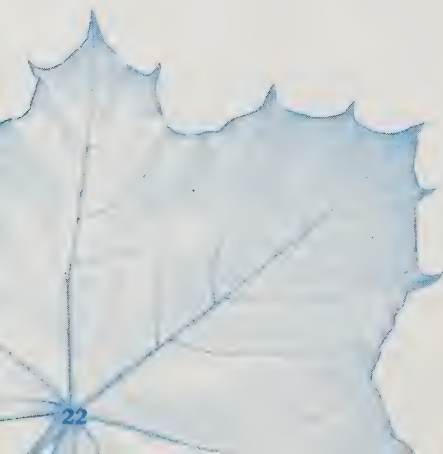
**Attn:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 2nd day of August, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division

cc: Geoffrey Gibson, Towers Perrin Inc.  
Audrey Mak, Fraser Milner Casgrain  
Mark Zigler, Koskie Minsky







**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to the payment out of the **Dry-Ac Ltd. Executive Pension Plan, Registration No. 987057**;

**TO:** **Dry-Ac Ltd.**  
98 Daffodil Crescent  
Ancaster ON L9K 1E2

**Attention:** Eugene Campbell  
President & Secretary  
**Applicant and Employer**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the Act, consenting to the payment out of the Dry-Ac Ltd. Executive Pension Plan, Registration No. 987057 (the "Plan"), to Dry-Ac Ltd. in the amount of \$92,800 as at February 1, 2001, plus earnings there onto the date of payment.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that a provision has been made for the payment of liabilities of the pension plan as calculated for purposes of termination of the pension plan.

**I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Dry-Ac Ltd. is the employer as defined in the Plan (the "Employer").

2. The Plan was wound up, effective February 1, 2001.
3. As at February 1, 2001, the surplus in the Plan was estimated at \$92,800.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and the sole member (as defined in the application) entitled to payments, the surplus in the Plan at the date of payment, is to be distributed 100% to the Employer.
6. The Employer has applied, pursuant to section 78 of the Act and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 100% of the surplus in the Plan.
7. The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the Act and with clause 8(1)(b) of the Regulation.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

**Attn:** The Registrar

<sup>1</sup>NOTE - PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 14th day of August, 2002.

K. David Gordon

Deputy Superintendent, Pension Division

cc: Jean Robichaud, The Standard Life  
Assurance Company



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Staff Pension Plan for Employees of Furmanite Canada Ltd., Registration No. 428557;**

**TO:** **Furmanite Canada Ltd.**  
862 Upper Canada Drive, Unit 9  
Sarnia ON N7T 7H3

**Attention:** Mr. Dan Stitt  
President

**Applicant and Employer**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the Act, consenting to the payment out of the Staff Pension Plan for Employees of Furmanite Canada Ltd., Registration No. 428557 (the "Plan"), to Furmanite Canada Ltd. in the amount of \$88,330 as at September 30, 1997, plus investment earnings and other adjustments thereto, to the date of payment.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph 5 below) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Furmanite Canada Ltd. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective September 30, 1997.
3. As at September 30, 1997, the surplus in the Plan was estimated at \$159,340.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 100% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
  - a) a minimum of 45% of surplus without interest as at September 30, 1997, equalling \$71,010, to a maximum of 40% of the final valuation of the surplus prior to distribution will be distributed to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement; and
  - b) the balance of the surplus refunded to the Employer after the members and former members received their share.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 55% of the surplus in the Plan (after adding investment earnings and deducting the expenses related to the wind up of the Plan and adjustments for Surplus agreement).



7. The application appears to comply with section 78 and subsection 79(3)(a)&(b) of the Act and with clause 8(1)(b) and subsection 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

**Attn:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 11th day of September, 2002.

K. David Gordon

Deputy Superintendent, Pension Division

cc: Marian McKillop, Corporate Benefit  
Analysts, Inc.

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Contributory Pension Plan for Salaried Employees of McMaster University Including McMaster Divinity College 2000, Registration No. 1079920;**

**TO:** **McMaster University**  
1280 Main Street West  
Gilmour Hall — 202  
Hamilton ON L8S 4K1

**Attention:** Karen Belaire  
Vice-President Administration  
**Applicant and Employer**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the Act, consenting to the payment out of the Contributory Pension Plan for Salaried Employees of McMaster University Including McMaster Divinity College 2000, Registration No. 1079920 (the "Plan"), to McMaster University in the amount of 50 per cent of the Distributable Surplus as at July 1, 2000, as defined in the Surplus Sharing Agreement plus investment earnings thereon to the date of payment. The Distributable Surplus is estimated to be \$152,842,041.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. McMaster University is the employer as defined in the Plan (the "Employer").
2. As at July 1, 2000, the surplus in the Plan was estimated at \$152,842,041.
3. The Plan provides for payment of surplus to the Employer while the Plan continues.
4. The application discloses that by written agreement made by the Employer and all of the active members and other members (as defined in the application), all of the former members and other persons entitled to payments from the fund and all persons in respect of whom the administrator has purchased an annuity or ancillary benefit — other than those persons who requested the administrator to do so, the distributable surplus in the Plan at the date of payment, after deduction of expenses is to be distributed:
  - a) 50% to the Employer; and
  - b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
5. The Employer has applied, pursuant to section 78 of the Act, and section 10 of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus to be distributed from the Plan (after adding 50% of investment earnings and deducting 50% of the expenses thereto).
6. The application appears to comply with section 78 and subsection 79(1) of the Act and with section 10 and subsections 25(1), 25(2) and 25(4) of the Regulation.
7. Such further and other reasons as come to my attention.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

**Attn:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 13th day of September, 2002.

K. David Gordon

Deputy Superintendent, Pension Division

cc: Randy V. Bauslaugh, Blake Cassels &

Graydon LLP

Michael Mazzuca, Koskie Minsky

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Eaton Superannuation Plan for Designated Employees, Registration No. 0593673;**

**TO:** **Richter and Partners Inc.**  
c/o Fasken Martineau DuMoulin LLP  
66 Wellington Street West  
Suite 4200, Toronto Dominion Bank Tower  
Box 20, Toronto-Dominion Centre  
Toronto ON M5K 1N6

**Attention:** Brent K. Duguid  
**Applicant**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the Act, consenting to the payment out of the Eaton Superannuation Plan for Designated Employees, Registration No. 0593673 (the "Plan"), to Richter and Partners Inc., Liquidator of Distributionco Inc. in the amount of \$354,700 as at December 31, 2001, plus investment earnings thereon to the date of payment, and adjusted for actual expenses incurred in connection with this Application.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that the payment of the members' negotiated share of the surplus has been made.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. The Applicant is the Liquidator of Distributionco Inc., who is duly authorized by The T. Eaton Company Limited (the employer as defined in the Plan), to receive the surplus assets.
2. The Plan was wound up, effective September 11, 1999.
3. As at December 31, 2002, the surplus in the Plan was estimated at \$1,773,700.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Applicant, and 100% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
  - a) 20% to the Employer; and
  - b) 80% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Applicant has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 20% of the surplus in the Plan as at December 31, 2001, plus investment earnings and deducting the expenses related to this application.
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

**Attn:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 20th day of September, 2002.

K. David Gordon

Deputy Superintendent, Pension Division

cc: Paul Macphail, PricewaterhouseCoopers Inc.

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to the payment out of the **Contributory Pension Plan for Salaried Employees of McMaster University Including McMaster Divinity College 2000, Registration No. 1079920;**

**TO:** **McMaster University**  
1280 Main Street West  
Gilmour Hall — 202  
Hamilton ON L8S 4K1

**Attention:** Karen Belaire  
Vice-President Administration  
**Applicant and Employer**

### **AMENDED NOTICE OF PROPOSAL**

(Amended September 27, 2002)

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the Act, consenting to the payment out of the Contributory Pension Plan for Salaried Employees of McMaster University Including McMaster Divinity College 2000, Registration No. 1079920 (the "Plan"), to McMaster University in the amount of 50 percent of the Distributable Surplus as at July 1, 2000, as defined in the Surplus Sharing Agreement plus investment earnings thereon to the date of payment. The Distributable Surplus is estimated to be \$152,842,041.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. McMaster University is the employer as defined in the Plan (the "Employer").

2. As at July 1, 2000, the surplus in the Plan was estimated at \$318,213,000.
3. The Plan provides for payment of surplus to the Employer while the Plan continues.
4. The application discloses that by written agreement made by the Employer, and all of the active members and other members (as defined in the application), all of the former members and other persons entitled to payments from the fund, and all persons in respect of whom the administrator has purchased an annuity or ancillary benefit — other than those persons who requested the administrator to do so, the distributable surplus in the Plan at the date of payment, after deduction of expenses is to be distributed:
  - a) 50% to the Employer; and
  - b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
5. The Employer has applied, pursuant to section 78 of the Act, and section 10 of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the excess of the Distributable Surplus over the expenses in respect of the surplus distribution (as described in the Surplus Sharing Agreement) plus 50% of the net investment earnings on such excess (as described in the Surplus Sharing Agreement).
6. The application appears to comply with section 78 and subsection 79(1) of the Act and with section 10 and subsections 25(1), 25(2) and 25(4) of the Regulation.
7. Such further and other reasons as come to my attention.





**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

**Attn:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 27th day of September, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division  
By Delegated Authority

cc: Randy V. Bauslaugh, Blake Cassels &  
Graydon LLP  
Michael Mazzuca, Koskie Minsky

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, S.O. 1997, c.28 (the "PBA");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69(1) (d) of the PBA relating to the **Slater Steel Inc. Pension Plan for Corporate Employees and Salaried Employees of the Hamilton Specialty Bar Division, Registration Number 308338;**

**TO: Slater Steel Inc.  
Hamilton Specialty Bar  
Division**  
P.O. Box 2943, Hamilton  
Stn LCD 1  
Hamilton ON L8N 3P9  
**Employer and Administrator**

**AND TO: Osler Hoskin & Harcourt  
Barristers and Solicitors**  
Box 50, 1 Canadian Place  
Toronto ON M5X 1B8

**Counsel to the Employer and  
Administrator**

**AND TO: Murray Gold  
Koskie Minsky  
Barristers and Solicitors**  
20 Queen Street West  
Suite 900, Box 52  
Toronto ON M5H 3R3  
**Counsel to former employees**

## **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under section 69 (1) (d) of the PBA that the Slater Steel Inc. Pension Plan for Corporate Employees and Salaried Employees of the Hamilton Specialty Bar Division, Registration Number 308338 (the "Plan"), be wound up, in part in relation to those members and former members of the Plan

who ceased to be employed by Slater Steel Inc. ("Slater Steel") effective from March 13, 1998 to January 26, 2000, as a result of the reorganization of the business of Slater Steel.

## **REASONS FOR THE ORDER:**

1. Slater Steel is the employer and administrator of the Plan.
2. There was a reorganization of senior management of Slater Steel in 1998 resulting in the termination of a number of senior managers and the elimination of positions formerly held by the terminated managers.
3. In 1998, there was a significant change relating to the restructuring of the senior management of Slater Steel, a centralized approach to management and a capitalization of synergies that exist among core businesses. Specifically, these changes related to the combining of purchasing functions, sales and marketing activities from Hamilton Specialty Bar Division (HSB), Fort Wayne and Sorel Operations.
4. There was a general cost cutting initiative undertaken which culminated in multiple terminations in October 1998. Slater Steel voluntarily declared a partial wind up effective October 31, 2001, in respect of all active members of the Plan whose employment was involuntarily terminated, who were offered early retirement with non-pension enhancements or who resigned during October 1998.
5. In 1998, there were capital expenditures to replace aging equipment to improve productivity. There was the completion of a new arc furnace at HSB facility. The furnace was commissioned on a full time basis in November 1997 and was designed to reduce costs, increase production and lower environmental impacts.



6. Slater divested itself of the Melburn Truck Lines subsidiary in February 1999.
7. Between March 13, 1998 and January 26, 2000, a significant number of members of the Plan ceased to be employed by Slater Steel, as a result of the reorganization of the business of Slater Steel within the meaning of clause 69(1)(d) of the PBA.
8. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the PBA to request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>

Your written notice must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

For further information, contact the registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.**

**THE ADMINISTRATOR IS REQUIRED** pursuant to subsection 89(5) of the Act to transmit a copy of this Notice of Proposal to the following persons: all members and former members of the Plan who were employed by Slater Steel and who ceased to be employed by Slater Steel effective between March 13, 1998 and January 26, 2000.

DATED at Toronto, Ontario, this 27th day of September, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division  
By Delegated Authority

<sup>1</sup>NOTE — PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Pension Plan for Employees of The Wool Bureau of Canada Limited, Registration No. 0314187**;

**TO:** **Woolmark Americas, Ltd.**  
7 Purdue Road  
Edison, New Jersey  
USA 08820

**Attention:** John McGowan  
President

**Applicant, Employer and  
Administrator of the Plan**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under subsection 78(1) of the Act, consenting to payment out of the Pension Plan for Employees of The Wool Bureau of Canada Limited, Registration No. 0314187 (the "Plan"), to Woolmark Americas, Ltd., of the Net Company Surplus. Net Company Surplus means 50% of the Surplus less the reasonable legal fees, disbursements and taxes charged to the Applicant after January 1, 1999, in respect of the wind up of the Plan and the distribution of Surplus. Surplus means the surplus in the Plan, plus investment earnings thereon, after deducting actuarial expenses in connection with the wind up of the Plan including the distribution of surplus, but prior to deducting the reasonable legal fees, disbursements and taxes charged to the Applicant after January 1, 1999, in respect of the wind up of the Plan and the distribution of Surplus and the reasonable legal fees, disburse-

ments and taxes charged for services to the members after January 1, 2000, in respect of the distribution of Surplus.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that the payment of the members' share of the negotiated surplus has been made.

### **REASONS FOR THE ORDER:**

1. The Applicant is the employer named in the Plan.
2. The Plan was wound up, effective December 31, 1998.
3. The Employer has applied, pursuant to section 78 of the Act and clause 8(1)(b) of Regulation 909 made under the Act, for consent of the Superintendent of Financial Services to the payment of part of the surplus in the Plan on wind up.
4. As of December 31, 1998, the surplus in the Plan was estimated at approximately \$2,157,892.
5. The Applicant and the members and former members of the Plan entered into a Surplus Distribution Agreement and Release dated as of March 28, 2001, wherein it was agreed that the Applicant would receive the Net Company Surplus as defined therein. Net Company Surplus is defined as 50% of the Surplus less the reasonable legal fees, disbursements and taxes charged to the Applicant after January 1, 1999, in respect of the wind up of the Plan and the distribution of Surplus. Surplus was defined in that agreement as the sum of the amount remaining in the Plan, plus investment earnings thereon, after deducting actuarial expenses in connection with the wind up of the Plan including the distribution of surplus, but prior to deducting the reasonable legal fees, disbursements and taxes charged



to the Applicant after January 1, 1999, in respect of the wind up of the Plan and the distribution of Surplus and the reasonable legal fees, disbursements and taxes charged for services to the Members after January 1, 2000, in respect of the distribution of Surplus. The Applicant has estimated that the amount to be refunded to the Applicant, as at December 31, 2000, and before the deduction of the Applicant's legal fees and disbursements and taxes is \$1,138,320.54.

6. The Plan, which was established as of July 1, 1975, as the Pension Plan for the Employees of the Wool Bureau of Canada Limited (1975), provides for the payment of surplus to the Employer on the wind up of the Plan.
7. The application discloses that the name of the Plan was changed to the Pension Plan for the Employees of the Wool Bureau of Canada Limited effective January 1, 1988 and that the name of the Applicant was changed from The Wool Bureau of Canada Limited to Woolmark Americas, Ltd. in 1998.
8. The application appears to comply with section 78 and subsections 79(3)(a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
9. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>

Your written notice must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

For further information, contact the registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.**

DATED at North York, Ontario, this 8th day of October, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division  
Financial Services Commission of Ontario

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



## Notices of Proposal to Make a Declaration

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act relating to the **Retirement Plan for Employees of Pigott Construction Limited and Participating Companies, Registration Number C-4989**;

**TO:** **Buck Consultants Limited**  
P.O. Box 15  
Suite 1500  
95 Wellington Street West  
Toronto ON M5J 2N7

**Attention:** Ms. Wafaa Babcock, F.S.A., F.C.I.A.  
**Administrator**

**Pigott Construction Ltd.**  
P.O. Box 2309  
Hamilton ON L8N 3G7

**Attention:** W. Grant Dickinson  
Vice-President, Finance  
**Employer**

### NOTICE OF PROPOSAL TO MAKE A DECLARATION

#### **WHEREAS:**

1. The Retirement Plan for Employees of Pigott Construction Limited and Participating Companies (the "Plan"), is registered under the Act as Registration Number C-4989; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund"), by the Act or the regulations made thereunder; and
3. The Plan was wound up by the employer effective December 31, 1991; and

4. A wind up report was filed by the employer and the Superintendent of Pensions approved the wind up report on September 17, 1992; and
5. All benefits and surplus assets were paid out of the plan in 1992 with no assets remaining in the Plan; and
6. In the year 2000, a deferred vested member of the Plan, Colin Holland, claimed he was omitted in error from the disbursement of benefits on wind up and provided evidence that he was entitled to a benefit upon wind up; and
7. Buck Consultants was appointed administrator of the Plan by the Superintendent of Financial Services on July 6, 2000.

**NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION** in respect of the Plan, under section 83 of the Act, that the Guarantee Fund applies to the Plan for the following reasons:

#### **REASONS FOR THE PROPOSED DECLARATION:**

1. Colin Holland was entitled to a benefit from the Plan upon wind up but never received it; and
2. A supplementary wind up report for the Plan as at April 30, 2002, reveals that to provide the benefit for Colin Holland and to meet the expenses and other allowances incurred in determining and distributing his entitlement, would require an amount of \$18,040 as at April 30, 2002; and
3. There are currently no assets in the Plan to provide the benefit entitlement of Colin Holland and other expenses; and





4. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied; and
5. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York ON M2N 6L9  
Attention : The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

DATED at North York, Ontario, this 12th day of July, 2002.

K. David Gordon  
Deputy Superintendent, Pensions  
Financial Services Commission of Ontario

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Gallaher Thorold Paper Co. Hourly Paid Pension Plan, Registration Number 1039981;**

**TO:** **Morneau Sobeco**  
895 Don Mills Road  
One Morneau Sobeco Centre  
Suite 700  
Toronto ON M3C 3W3

**Attention:** Mr. David R. Kearney  
**Administrator**

**Gallaher Thorold Paper Co.**  
67 Front Street North  
Thorold ON L2V 3Z7

**Attention:** Mr. David Rennie, Vice President,  
Human Resources

**Employer**  
**Ernst & Young Inc.**  
Ernst & Young Tower  
P.O. Box 251, 222 Bay Street  
Toronto-Dominion Centre  
Toronto ON M5K 1J7

**Attention:** Mr. Philip Kan, Manager  
**Trustee in Bankruptcy for**  
**Gallaher Thorold Paper Co.**

## **NOTICE OF PROPOSAL TO MAKE A DECLARATION**

### **WHEREAS:**

1. The Gallaher Thorold Paper Co. Hourly Paid Pension Plan, Registration Number 1039981 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund"), by the Act or the regulations made thereunder; and
3. On July 15, 2002, the Superintendent of Financial Services issued an Order dated July 12, 2002, that the Plan be wound up effective May 25, 1999; and
4. The Superintendent of the Financial Services Commission appointed Morneau Sobeco as the administrator (the "Administrator") of the Plan on July 10, 2002.

**NOW THEREFORE TAKE NOTICE** that I propose to consider to make a declaration, pursuant to section 83 of the Act, that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan at wind up has been estimated to be 73.60%.
2. The employer, Gallaher Thorold Paper Co., was assigned into bankruptcy on June 15, 1999.
3. The trustee in bankruptcy for Gallaher Thorold Paper Co. has advised the Administrator that there are no funds available from the estate of Gallaher Thorold Paper Co. to make payment to the Plan.



4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York Ontario M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

DATED at North York, Ontario, this 2nd day of October, 2002.

K. David Gordon  
Deputy Superintendent, Pensions  
Financial Services Commission of Ontario

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c.28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28, respecting the **Pension Plan for Employees of Vulcan Packaging Inc. (the "Pension Plan")**, **Registration Number 0364323**;

**TO:** **Morneau Sobeco**  
1500 Don Mills Road  
Suite 500  
Toronto ON M3B 3K4

**Attention:** Mr. Al Kiel  
Partner  
**Administrator of the Pension Plan for Employees of Vulcan Packaging Inc.**

**AND TO:** **Vulcan Packaging Inc.**  
15 Bethridge Road  
Rexdale ON M9W 1M6

**Attention:** Mr. Alex Telfer  
President  
**Employer**

**AND TO:** **Ernst & Young Inc.**  
175 Commerce Valley Drive West  
Suite 600  
Thornhill ON L3T 7P6

**Attention:** Mr. Harold Reiter  
**Trustee in Bankruptcy,  
Vulcan Packaging Inc.**

## **NOTICE OF PROPOSAL TO MAKE A DECLARATION**

### **WHEREAS:**

1. The Pension Plan for Employees of Vulcan Packaging Inc., Registration No. 0364323 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, c.28 (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund"), by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective May 15, 1997; and
4. The Superintendent of Pensions initially appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on August 1, 1997 and on July 11, 2002, appointed Morneau Sobeco as Administrator to replace Deloitte & Touche; and

**NOW THEREFORE TAKE NOTICE** I propose to consider to make a declaration, pursuant to section 83 of the Act, that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Supplement to the Actuarial Valuation Report filed by the Administrator indicates an estimated **funding deficiency** of \$1,252,900 as at May 31, 2002 and an estimated claim against the Guarantee Fund as at May 31, 2002 of \$1,223,400.
2. Ernst & Young Inc. was appointed Trustee in Bankruptcy of Vulcan Packaging Inc. on May 15, 1997.



3. The Trustee in Bankruptcy for Vulcan Packaging Inc. has advised the Administrator that there are no funds available from the estate of Vulcan Packaging Inc. to make payment to the Pension Plan.
4. The Administrator has advised that there are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

DATED at North York, Ontario, this 3rd day of October, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "PBA");

**AND IN THE MATTER OF** a Proposal by the  
Superintendent of Financial Services to Make a  
Declaration under Section 83 of the PBA,  
respecting **The Algoma Steel Inc. Salaried  
Employees Pension Plan for Employees in  
Canada, Registration Number 0335810;**

**TO:** **Morneau Sobeco**  
895 Don Mills Road  
Suite 700  
One Morneau Sobeco Centre  
Toronto ON M3C 1W3

**Attention:** Mr. Al Kiel  
Partner

**Administrator**

**AND TO:** **Algoma Steel Inc.**  
105 West Street  
Sault Ste. Marie ON P6A 7B4

**Attention:** Mr. Paul C. Finley  
General Counsel and Corporate  
Secretary

**Employer**

**AND TO:** **The United Steelworkers  
of America**  
c/o Days Inn, 320 Bay Street,  
Room 15  
Sault Ste. Marie ON P6A 1X1

**Attention:** Mr. Ian Kersley  
President

**Local Union 2724**

**NOTICE OF PROPOSAL TO MAKE  
A DECLARATION**

**WHEREAS:**

1. The Algoma Steel Inc. Salaried Employees Pension Plan for Employees in Canada, Registration No. 0335810 (the "Pension Plan"), is registered under the PBA;
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund"), by the PBA or the regulations made thereunder;
3. Algoma Steel Inc. ("Algoma") instituted proceedings under the *Companies' Creditors Arrangement Act*, and its Plan of Reorganization was approved by its creditors and sanctioned by the court on December 19, 2001;
4. The Pension Plan was terminated effective September 17, 2001, by Algoma Steel Inc. (in accordance with section 68 of the PBA; and
5. The Superintendent of Financial Services appointed Morneau & Sobeco as administrator (the "Administrator") of the Pension Plan on September 6, 2002.

**NOW THEREFORE TAKE NOTICE** that I propose to make a declaration, pursuant to section 83 of the PBA, that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Report on the Plan Wind-up and Pension Benefits Guarantee Fund Application as at September 17, 2001, indicates an estimated funding deficiency of \$79,977,000 and an estimated funded ratio of 75.68%;
2. The Superintendent of Financial Services and Algoma entered into an agreement dated January 29, 2002, which specifically requires Algoma to file the application for a





declaration that the Guarantee Fund applies to the Pension Plan.

3. The Superintendent of Financial Services is satisfied that Algoma could not meet the funding requirements of the PBA for the Plan, as of the effective date of the wind up of the Plan.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the PBA, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York ON M2N 6L9

**Attention:** The Registrar

For further information, contact the Registrar of the Tribunal by telephone at 416-226-7152, toll free at 1-800-668-0128 ext 7752, or by fax at 416-226-7750.

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED IN THIS NOTICE.**

DATED at North York, Ontario, this 18th day of October, 2002.

K. David Gordon

Deputy Superintendent, Pension Division  
By Delegated Authority

<sup>1</sup>NOTE — PURSUANT TO section 112 of the PBA, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the PBA, respecting the **Non-Contributory Pension Plan Covering Hourly Paid Bargaining Unit Employees of Algoma Steel Inc., Registration Number 0335802;**

**TO:** **Morneau Sobeco**  
895 Don Mills Road  
Suite 700  
One Morneau Sobeco Centre  
Toronto ON M3C 1W3

**Attention:** Mr. Al Kiel  
Partner

**Administrator**

**AND TO:** **Algoma Steel Inc.**  
105 West Street  
Sault Ste. Marie ON P6A 7B4

**Attention:** Mr. Paul C. Finley  
General Counsel and Corporate Secretary

**Employer**

**AND TO:** **The United Steelworkers of America**  
68 Dennis Street  
Sault Ste. Marie ON P6A 2W9

**Attention:** Mr. Tom Bonell  
President, Local Union 2251

**Union**

## **NOTICE OF PROPOSAL TO MAKE A DECLARATION**

### **WHEREAS:**

1. The Non-Contributory Pension Plan Covering Hourly Paid Bargaining Unit Employees of Algoma Steel Inc. Registration No. 0335802 (the "Pension Plan"), is registered under the PBA;
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund"), by the PBA or the regulations made thereunder;
3. Algoma Steel Inc. ("Algoma") instituted proceedings under the *Companies' Creditors Arrangement Act*, and its Plan of Reorganization was approved by its creditors and sanctioned by the court on December 19, 2001;
4. The Pension Plan was terminated effective September 17, 2001, by Algoma in accordance with section 68 of the PBA; and
5. The Superintendent of Financial Services appointed Morneau Sobeco as administrator (the "Administrator") of the Pension Plan on September 6, 2002.

**NOW THEREFORE TAKE NOTICE** that I propose to make a declaration, pursuant to section 83 of the PBA, that the Guarantee Fund applies to the Pension Plan, for the following reasons:

1. The Report on the Plan Wind-up and Pension Benefits Guarantee Fund Application as at September 17, 2001, indicates that the Pension Plan has an estimated funding deficiency of \$361,983,300 and an estimated funded ratio of 52.94%.
2. The Superintendent of Financial Services and Algoma entered into an agreement



dated January 29, 2002, which specifically requires Algoma to file the application for a declaration that the Guarantee Fund applies to the Pension Plan.

3. The Superintendent of Financial Services is satisfied that Algoma could not meet the funding requirements of the PBA for the Plan, as of the effective date of the wind up of the Plan.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the PBA, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York ON M2N 6L9

**Attention:** The Registrar

For further information, contact the Registrar of the Tribunal by phone at 416-226-7152, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED IN THIS NOTICE.**

DATED at North York, Ontario, this 18th day of October, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division  
By Delegated Authority

<sup>1</sup>NOTE — PURSUANT to section 112 of the PBA, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.





## Notices of Proposal to Refuse to Make an Order

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended (the "PBA");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Refuse to Make an Order under section 87(1) of the PBA, respecting the **Public Service Pension Plan, Registration No. 0208777**;

**TO:** **Gillis Zago Barristers LLP**  
200 Main Street North  
Brampton ON L6V 1P1

**Attn:** Mr. Stewart C.E. Gillis  
**Solicitors for Mr. George Polygenis (the "Applicant")**

**AND TO:** **Ontario Pension Board**  
1 Adelaide Street East, Suite 1100  
Toronto ON M5C 2X6

**Attn:** Mr. Ignas Nastajus, Secretary  
Adjudication & Policy Committees  
**Administrator**

### NOTICE OF PROPOSAL

**I PROPOSE TO REFUSE TO MAKE AN ORDER** under section 87(1) of the PBA that the Pension Policy Committee of the Ontario Pension Board reconsider its decision denying a disability pension to the Applicant under section 14(1) of the Public Service Pension Plan, Registration No. 0208777 (the "Plan");

### **REASONS FOR THE REFUSAL:**

1. The Applicant's employment as an LCBO branch manager ended in March 1997.
2. The Applicant applied for a disability pension under section 14(1) of the Plan. Section 14(1) of the Plan gives the Board the duty to determine whether an applicant is entitled to a disability pension. A Plan member with sufficient credit or continuous membership in the Plan is entitled to a disability pension if the Board finds the member to be "totally

and permanently disabled" as defined in section 1 of the Plan:

"totally and permanently disabled" means, in relation to an individual, suffering from a physical or mental impairment that prevents the individual from engaging in any employment for which the individual is reasonably suited by virtue of his or her education, training or experience and that can reasonably be expected to last for the remainder of the individual's lifetime.

3. Section 31(3) of the Plan authorizes the Board to make rules and procedures and to delegate its duties and responsibilities to a committee or other person.
4. The Board has established Disability Procedures and Adjudication Procedures setting out the rules and procedures which apply when a member applies for a disability pension.
5. The Adjudication Procedures provide a formal adjudication process in order to, *inter alia*, determine eligibility for disability benefits. The Adjudication Committee of the Board (the "Adjudication Committee") adjudicates the member's claim. The member has a right to appeal the decision to the Pension Policy Committee (the "Committee"). Article 7.5.7 of the Adjudication Procedures states, "The decision of the Pension Policy Committee shall be final."
6. The Adjudication Committee of the Ontario Pension Board (the "Board") rejected the Applicant's claim in November 2000, finding that he was not "totally and permanently disabled" as defined in section 1 of the Plan.
7. The Applicant appealed that decision to the Pension Policy Committee and submitted additional medical information in March 2001. The Committee met in May 2001 and



- decided to request additional information in the form of an independent medical examination arranged by the Board's medical consultants. The Committee is authorized to request further information by article 7.5.4 of the Adjudication Procedures.
8. The Board's medical consultants received the findings of the independent medical examiner and issued their own summary report to the Committee.
  9. On November 20, 2001, the Committee met and rejected the applicant's claim with written reasons, referred to in paragraphs 12 and 13 below.
  10. On June 27, 2002, the Applicant requested the Superintendent of Financial Services (the "Superintendent") to issue an Order overturning the Committee's decision and either substituting a finding of disability or directing a reconsideration of the case.
  11. The Superintendent can make an Order under section 87(1) of the PBA if he is of the opinion, on reasonable and probable grounds, that a pension plan is not being administered in accordance with the PBA, the regulations or the pension plan.
  12. A "disability pension" is an ancillary benefit under s. 40 of the PBA. Section 10(1)5 of the PBA requires that the documents that create and support a pension plan set out the "requirements for entitlement under the pension plan to any pension benefit or ancillary benefit." Section 19(1) of the PBA states, "The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with this Act and the regulations."
  13. The Committee's decision states that the Committee decided to uphold the Adjudication Committee's denial of the Applicant's disability pension application "after a careful review of the [Applicant]'s case file and the medical findings." The Committee found that the Applicant was not "totally and permanently disabled" as defined in section 1 of the Plan.
  14. The Committee made its decision in accordance with the applicable rules and procedures established by the Board under the Plan for the consideration of disability pension applications and in accordance with the definition of "totally and permanently disabled" under the Plan.
  15. For the reasons set out above, the Superintendent is not of the opinion, on reasonable and probable grounds, that the Plan is not being administered in accordance with the PBA, the regulations or the Plan.
  16. Such and further reasons as may come to my attention.
- YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the PBA. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>

<sup>1</sup>NOTE — PURSUANT to section 112 of the PBA, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



Your written notice must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO MAKE THE REQUESTED ORDER AS PROPOSED IN THIS NOTICE.**

DATED at North York, Ontario, October 11, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division  
By Delegated Authority





## Orders that Pension Plans Be Wound Up

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the PBA, relating to the **Pension Plan for Unionized Employees of Northern Globe Building Materials (Thorold Division), Registration Number 680405 (formerly C-104311) (the "Plan")**;

**TO:** **Arthur Andersen Inc.**  
4 King Street West  
Suite 1050  
Toronto ON M5H 1B6

**Attention:** Mr. David R. Kearney  
**Administrator**

**AND TO:** **Striker Paper Canada, Inc.**  
100 Ormond Street South  
P.O. Box 10  
Thorold ON L2V 3Y7

**Attention:** Ms. Patricia Gough, Manager  
**Employer**

### ORDER

**ON** April 29, 2002, the Deputy Superintendent, Pensions, of the Financial Services Commission of Ontario issued a Notice of Proposal to Make an Order dated April 25, 2002, to the Employer and to the Administrator of the Pension Plan for Unionized Employees of Northern Globe Building Materials (Thorold Division), Registration No. 680405 (the "Plan"), pursuant to section 69(1) of the Act, that the Plan be wound up in whole for those members of the Plan who ceased to be employed effective between November 30, 1998 and February 22, 1999.

**NO REQUEST** for a hearing has been received by the Financial Services Tribunal in connection with this matter.

**I THEREFORE ORDER** that Plan be wound up in whole for those members of the Plan who ceased to be employed effective between November 30, 1998 and February 22, 1999.

### **REASONS:**

1. There was a cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the PBA.
2. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer, pursuant to clause 69(1)(d) of the PBA.
3. All or a significant portion of the business carried on by the employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the PBA.

**THE ADMINISTRATOR IS REQUIRED**, pursuant to section 89(5) of the PBA, to transmit a copy of this Order to the following persons:

**Communications  
Energy and Paper Workers  
Union of Canada**  
5890 Aspen Court  
Niagara Falls ON L2G 7V3

**Attention:** Mr. Michael Lambert,  
National Representative

**Union  
BDO Dunwoody Limited**  
Royal Bank Plaza  
P.O. Box 33  
Toronto ON M5J 2J9

**Attention:** Mr. Mark Chow  
**Receiver and Trustee in  
Bankruptcy for Striker Paper  
Canada, Inc.**



DATED at North York, Ontario, June 20, 2002.

Tom Golfetto

Director, Pension Plans Branch

By Delegated Authority from

Superintendent of Financial Services





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, relating to the **Gallaher Thorold Paper Co. Hourly Paid Pension Plan, Registration Number 1039981 (the "Plan")**;

**TO:** **Morneau Sobeco**  
1500 Don Mills Road  
Suite 500  
Toronto ON M3B 3K4

**Attention:** Mr. David R. Kearney  
**Administrator**

**AND TO:** **Gallaher Thorold Paper Co.**  
67 Front Street North  
Thorold ON L2V 3Z7

**Attention:** Mr. David Rennie, Vice-President,  
Human Resources  
**Employer**

### **ORDER**

**ON** or about March 26, 2002, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order dated March 26, 2002, to the Employer and to the Administrator of the Gallaher Thorold Paper Co. Hourly Paid Pension Plan, Registration Number 1039981 (the "Plan"), pursuant to section 69(1) of the Act, that the Plan be wound up in whole effective May 25, 1999.

**NO REQUEST** for a hearing has been received by the Financial Services Tribunal in connection with this matter.

**I THEREFORE ORDER** that the Plan be wound up in whole effective May 25, 1999.

### **REASONS:**

1. There was a cessation or suspension of Employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. The Employer failed to make contributions to the pension fund as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
3. A significant number of members of the pension plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer, pursuant to clause 69(1)(d) of the Act.
4. All or a significant portion of the business carried on by the Employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.

DATED at North York, Ontario, this 12th day of July, 2002.

Tom Golfetto  
Director, Pension Plans Branch  
By Delegated Authority from  
Superintendent of Financial Services

cc:

**Communications**  
**Energy and Paper Workers**  
**Union of Canada**  
Locals 290 and 1521  
5890 Aspen Court  
Niagara Falls ON L2G 7V3

**Attention:** Michael Lambert

**International Union of**  
**Operating Engineers**  
Local 772  
370 Main Street East, Suite 302  
Hamilton ON L8N 1J6





**Attention:** Mr. Greg Hoath

**Ernst & Young Inc.**

Ernst & Young Tower  
P.O. Box 251, 222 Bay Street  
Toronto-Dominion Centre  
Toronto ON M5K 1J7

**Attention:** Mr. Philip Kan





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act") ;

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order, pursuant to section 69 of the Act, respecting the **Pension Plan for Executives of William H. Kaufman Inc., Registration No. 999631 (the "Plan")**;

**TO:**           **The Standard Life Assurance Company**  
1245 Sherbrooke Street West  
Montreal PQ H3G 1G3

**Attention:** Jean-Claude Lebel  
Pension Actuary  
**Administrator**

**AND TO:**   **William H. Kaufman Inc.**  
Kitchener Stn. C,  
410 King St. West  
P.O. Box 9005  
Kitchener ON N2G 4J8

**Attention:** Stuart Snyder  
Secretary Treasurer  
**Employer**

### **REVISED ORDER**

**ON** the 17th day of August, 2001, the Superintendent of Financial Services issued to William H. Kaufman Inc. (the "Employer") and to Standard Life Assurance Company, the administrator of the Plan (the "Administrator"), pursuant to section 69(1) of the Act, a Notice of Proposal to Make an Order that the Plan be wholly wound up effective July 21, 2000.

**NO REQUEST** for a hearing from the Employer or from the Administrator has been received by the Financial Services Tribunal in connection with this matter.

**IT IS THEREFORE ORDERED** that the Pension Plan for Executives of William H. Kaufman Inc., Registration No. 999631, be wholly wound up effective July 21, 2000.

**THE REASONS** for this order are:

1. There was a cessation or suspension of Employer contributions to the pension fund, within the meaning of clause 69(1)(a) of the Act.
2. The Employer failed to make contributions to the pension fund as required by the Act or the regulations within the meaning of clause 69(1)(b) of the Act.
3. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada), R. S. C. 1985, c. B-3, as amended, pursuant to clause 69(1)(c) of the Act.
4. A significant number of members of the Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer within the meaning of clause 69(1)(d) of the Act.
5. All or a significant portion of the business carried on by the Employer at a specific location was discontinued within the meaning of clause 69(1)(e) of the Act.

**THE ADMINISTRATOR IS REQUIRED**, pursuant to section 69(2) of the Act, to give notice of this Order to the following persons:

**Ernst & Young Inc.**  
Toronto-Dominion Centre  
222 Bay Street  
P.O. Box 251  
Toronto ON M5K 1J7



**Attention:** Philip Kan

**Interim Receiver and  
Receiver and Trustee in  
Bankruptcy for William H.  
Kaufman Inc.**

DATED at North York, Ontario, this 14th day of  
November, 2001.

Revised Order signed at North York, Ontario,  
this 7th day of August, 2002.

Tom Golfetto

Director, Pension Plans Branch

By Delegated Authority from

Superintendent of Financial Services

Financial Services Commission of Ontario







**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended;

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order, pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P.8, as amended,  
respecting the **Pension Plan for the  
Employees of Kaufman Footwear, Division  
of William H. Kaufman Inc., Registration  
No. 0340349 (the "Pension Plan")**;

**TO:**           **The Standard Life Assurance  
Company**  
1245 Sherbrooke Street West  
Montreal PQ H3G 1G3

**Attention:** Jean-Claude Lebel  
Pension Actuary  
**Administrator**

**AND TO:**   **Kaufman Footwear, Division  
of William H. Kaufman Inc.**  
P.O. Box 9005  
410 King Street West  
Kitchener ON N2G 4J8

**Attention:** S.I. Snyder  
Vice President, Finance  
**Employer**

**AND TO:**   **Ernst & Young Inc.**  
Ernst & Young Tower  
P.O. Box 251, 222 Bay Street  
Toronto-Dominion Centre  
Toronto ON M5K 1J7

**Attention:** Jorden Sleeth  
**Receiver and Trustee in  
Bankruptcy for William H.  
Kaufman Inc.**

## **ORDER**

**ON** the 27th day of June, 2002, the Deputy  
Superintendent, Pension Division, issued a Notice  
of Proposal to Make an Order dated the 25th day  
of June, 2002, pursuant to subsection 69(1) of  
the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as  
amended (the "Act"), to the Administrator and to  
the Employer to wind up in whole the Pension  
Plan for the Employees of Kaufman Footwear,  
Division of William H. Kaufman Inc., Registration  
No. 0340349.

**NO** Notice requiring a hearing was delivered to  
the Financial Services Tribunal (the "Tribunal"),  
by the Administrator and/or the Employer with-  
in the time prescribed by subsection 89(6) of  
the Act.

**IT IS THEREFORE HEREBY ORDERED** that  
the Pension Plan for the Employees of Kaufman  
Footwear, Division of William H. Kaufman Inc.,  
Registration No. 0340349, be wound up in whole,  
effective July 21, 2000, for the following reasons:

1. There was a cessation or suspension of  
Employer contributions to the pension  
fund.
2. A significant number of the members of the  
Pension Plan ceased to be employed by the  
Employer as a result of the discontinuance  
of all or part of the business of the Employer  
or as a result the reorganization of the busi-  
ness of the Employer.
3. The Employer is bankrupt within the mean-  
ing of the *Bankruptcy Act* (Canada).
4. A significant number of members of the  
Pension Plan cease to be employed by the  
Employer as a result of the discontinuance  
of all or part of the business of the Employer  
or as a result of the reorganization of the  
business of the Employer.



5. All or a significant portion of the business carried on by the Employer at a specific location is discontinued.

DATED at Toronto, Ontario, this 11th day of September, 2002.

Tom Golfetto  
Director, Pension Plans Branch  
By Delegated Authority from the  
Superintendent of Financial Services





**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended;

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make an  
Order, pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P.8, as amended,  
respecting the **Pension Plan for the  
Employees of Kaufman of Collingwood,  
The Furniture Division of William H.  
Kaufman Inc., Registration No. 0340091  
(the "Pension Plan")**;

**TO:**           **The Standard Life Assurance  
Company**  
1245 Sherbrooke Street West  
Montreal PQ H3G 1G3

**Attention:** Jean-Claude Lebel  
Pension Actuary  
**Administrator**

**AND TO:**   **Kaufman of Collingwood,  
The Furniture Division of  
William H. Kaufman Inc.**  
201 Balsam Street  
Collingwood ON L9Y 3Y7

**Attention:** Barry Knox  
Controller  
**Employer**

**AND TO:**   **Ernst & Young Inc.**  
Ernst & Young Tower  
P.O. Box 251, 222 Bay Street  
Toronto-Dominion Centre  
Toronto ON M5K 1J7

**Attention:** Jorden Sleeth  
**Receiver and Trustee in  
Bankruptcy for William H.  
Kaufman Inc.**

## **ORDER**

**ON** the 27th day of June, 2002, the Deputy  
Superintendent, Pension Division, issued a Notice  
of Proposal to Make an Order dated the 25th day  
of June, 2002, pursuant to subsection 69(1) of the  
*Pension Benefits Act*, R.S.O. 1990, c. P.8, as amend-  
ed (the "Act"), to the Administrator and to the  
Employer to wind up in whole the Pension Plan  
for the Employees of Kaufman of Collingwood,  
The Furniture Division of William H. Kaufman  
Inc., Registration No. 0340091.

**NO** Notice requiring a hearing was delivered to  
the Financial Services Tribunal (the "Tribunal"),  
by the Administrator and/or the Employer with-  
in the time prescribed by subsection 89(6) of  
the Act.

## **IT IS THEREFORE HEREBY ORDERED**

that the Pension Plan for the Employees of  
Kaufman of Collingwood, The Furniture  
Division of William H. Kaufman Inc.,  
Registration No. 0340091, be wound up in  
whole, effective July 14, 2000, for the follow-  
ing reasons:

1. There was a cessation or suspension of  
Employer contributions to the pension  
fund.
2. A significant number of the members of the  
Pension Plan ceased to be employed by the  
employer as a result of the discontinuance  
of all or part of the business of the employer  
or as a result the reorganization of the busi-  
ness of the employer.
3. The Employer is bankrupt within the mean-  
ing of the *Bankruptcy Act* (Canada).
4. A significant number of members of the  
Pension Plan cease to be employed by the  
Employer as a result of the discontinuance  
of all or part of the business of the Employer  
or as a result of the reorganization of the  
business of the Employer.





5. All or a significant portion of the business carried on by the Employer at a specific location is discontinued.
6. All or part of the Employer's business or all or part of the assets of the Employer's business are sold, assigned or otherwise disposed of and the person who acquires the business or assets does not provide a pension plan for the members of the Employer's pension plan who becomes employees of the person.

DATED at Toronto, Ontario, this 11th day of September, 2002.

Tom Golfetto

Director, Pension Plans Branch

by Delegated Authority from the  
Superintendent of Financial Services





## Consents to Payments out of Wound Up Pension Plans

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Pension Plan for Salaried Employees of Newman Steel Ltd. and its Associated Companies, Registration No. 283481;**

**TO:** **PricewaterhouseCoopers Inc.**  
c/o Blake, Cassels & Graydon LLP  
Box 25, Commerce Court West  
199 Bay Street  
Toronto ON M5L 1A9

**Attention:** Elizabeth Boyd  
Counsel to Pricewaterhouse-  
Coopers Inc.  
Reesha Hosein  
Counsel to Pricewaterhouse  
Coopers Inc.

**Applicant and receiver and  
manager of Newman Steel Ltd.  
KPMG Inc.**  
Suite 3300, Commerce Court West  
P.O. Box 31 Stn. Commerce Court  
Toronto ON M5L 1B2

**Attention:** Michael Creber  
Senior Vice-President  
**Plan Administrator**

### CONSENT

**ON** or about May 31, 2002, the Superintendent of Financial Services caused to be served on the Applicant, PricewaterhouseCoopers Inc. and KPMG Inc., the Plan Administrator, a Notice of Proposal dated May 28, 2002, to consent, pursuant to subsection 78(1) of the Act, to a pay-

ment out of the Pension Plan for Salaried Employees of Newman Steel Ltd. and its Associated Companies, Registration No. 283481 (the "Plan"), to PricewaterhouseCoopers Inc. in the amount of \$206,400 (representing 40% of the surplus of \$516,000 determined to be in the Plan as at November 4, 1991), plus the gains (net losses) thereon from November 4, 1991 to the date of payment, less 40% of all expenses incurred in connection with the administration of the wind up of the Plan, including, without limitation, 40% of the reasonable legal and actuarial fees and expenses of those Plan members included in the surplus sharing group who are represented by Anthony Wellenreiter of the law firm Wellenreiter & Wellenreiter.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Pension Plan for Salaried Employees of Newman Steel Ltd. and its Associated Companies, Registration No. 283481, to PricewaterhouseCoopers Inc., an amount of \$206,400 (representing 40% of the surplus of \$516,000 determined to be in the Plan as at November 4, 1991), plus the gains (net losses) thereon from November 4, 1991, to the date of payment, less 40% of all expenses incurred in connection with the administration of the wind up of the Plan, including, without limitation, 40% of the reasonable legal and actuarial fees and expenses of those Plan members included in the surplus sharing group who are represented by Anthony Wellenreiter of the law firm Wellenreiter & Wellenreiter.



**THIS CONSENT IS EFFECTIVE ONLY**

**AFTER** the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Sharing Agreement) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at Toronto, Ontario, this 16th day of July, 2002

Tom Golfetto

Director, Pension Plans Branch

By Delegated Authority from the  
Superintendent of Financial Services

cc: Mr. Husein Djuk

P.O. Box 312

North Rustico PEI C0A 1X0



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(4) of the Act, consenting to a payment out of the **Pension Plan for Hourly Employees of BICC Phillips Inc. Located at its Brockville Factory, Registration No. 293753;**

**TO:** **BICC Canada Inc.**  
c/o Balfour Beatty Construction,  
Inc.

**Attention:** Ms. Joanne Bonfiglio  
254 South Main Street  
New City NY 10956 USA

### CONSENT

**ON** or about June 28, 2002, the Superintendent of Financial Services caused to be served on BICC Canada Inc. a Notice of Proposal dated June 26, 2002, to consent, pursuant to subsection 78(4) of the Act, to payment out of the Pension Plan for Hourly Employees of BICC Phillips Inc. Located at its Brockville Factory, Registration No. 293753, to BICC Canada Inc. in the amount of \$728,818 as at August 22, 2000, adjusted for expenses, plus investment earnings thereon to the date of payment.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE consents** to the payment out of the Pension Plan for Hourly Employees of BICC Phillips Inc. Located at its Brockville Factory, Registration No. 293753, of \$728,818 as at August 22, 2000, adjusted for

expenses, plus investment earnings thereon to the date of payment, to BICC Canada Inc.

DATED at Toronto, Ontario, this 19th day of August, 2002.

Tom Golfetto  
Director, Pension Plans Branch  
By Delegated Authority from the  
Superintendent of Financial Services

cc: Mr. Duncan Richardson, Mercer Human  
Resource Consulting  
Mr. William Greenham  
Mr. Roger Eyre  
Mr. Malcolm Blair  
Mr. Giovanni Hrelia  
Mr. Robert C. Address  
Mr. W.G. Haggart  
Mr. Earl G. Mott  
Mr. J. Richard Gill  
Mr. Arthur W. Lane  
Mr. Donald W. Conlin



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act, consenting to a payment out of the **Pension Plan for Salaried Union Employees of BICC Phillips Inc. (Located at Brockville, Ontario), Registration No. 370205**

**TO:** **BICC Canada Inc.**  
c/o Balfour Beatty Construction,  
Inc.

**Attention:** Ms. Joanne Bonfiglio  
254 South Main Street  
New City NY 10956 USA

### **CONSENT**

**ON** or about June 24, 2002, the Superintendent of Financial Services caused to be served on BICC Canada Inc. a Notice of Proposal dated June 24, 2002, to consent, pursuant to subsection 78(4) of the Act, to payment out of the Pension Plan for Salaried Union Employees of BICC Phillips Inc. (Located at Brockville, Ontario), Registration No. 370205, to BICC Canada Inc. in the amount of \$23,735 as at August 22, 2000, adjusted for expenses, plus investment earnings thereon to the date of payment.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Pension Plan for Salaried Union Employees of BICC Phillips Inc. (Located at Brockville, Ontario), Registration No. 370205,

of \$23,735 as at August 22, 2000, adjusted for expenses, plus investment earnings thereon to the date of payment, to BICC Canada Inc.

DATED at Toronto, Ontario, this 19th day of August, 2002.

Tom Golfetto  
Director, Pension Plans Branch  
By Delegated Authority from the  
Superintendent of Financial Services

cc: Mr. Duncan Richardson, Mercer Human  
Resource Consulting  
Mr. Willard M. Burke  
Mr. Donald W. Conlin  
Mr. Arthur W. Lane



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act, consenting to a payment out of **the Retirement Plan for Certain Unionized Employees of Beta Brands Limited, Registration No. 1050210**;

**TO: Beta Brands Limited**

**Attention:** Mr. George Harrison, CFO & Secretary  
1156 Dundas Street East  
London ON N5W 5Y4

### CONSENT

**ON** or about June 19, 2002, the Superintendent of Financial Services caused to be served on Beta Brands Limited a Notice of Proposal dated June 19, 2002, to consent, pursuant to subsection 78(4) of the Act, to payment out of The Retirement Plan for Certain Unionized Employees of Beta Brands Limited, Registration No. 1050210, to Beta Brands Limited in the amount of \$17,376.10 as at June 30, 2001, plus interest, at the fund rate of return thereon to the date of payment.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of The Retirement Plan for Certain Unionized Employees of Beta Brands Limited, Registration No. 1050210, of \$17,376.10 as at June 30, 2001, plus interest, at the fund rate of return thereon to the date of payment, to Beta Brands Limited.

DATED at Toronto, Ontario, this 19th day of August, 2002.

Tom Golfetto

Director, Pension Plans Branch

By Delegated Authority from the Superintendent of Financial Services

cc: Mr. Eric Poirier, Mercer Human Resource Consulting

Mr. Michael E. Labute, Mercer Human Resource Consulting



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act, consenting to a payment out of the **Boehringer Ingelheim (Canada) Ltd./Ltée Employees Pension Plan, Registration No. 356162;**

**TO:** **Boehringer Ingelheim (Canada) Ltd./Ltée**

**Attention:** Ms. Louise Muller  
Manager, Human Resources  
5180 South Service Road  
Burlington ON L7L 5H4

DATED at Toronto, Ontario, this 21st day of August, 2002.

Tom Golfetto

Director, Pension Plans Branch

By Delegated Authority from the  
Superintendent of Financial Services

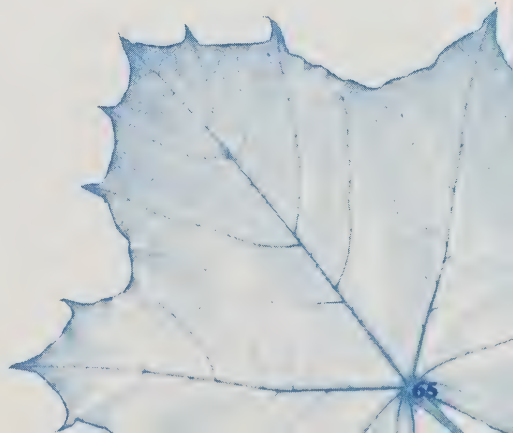
cc: Ms. Renate Leis, Buck Consultants Limited

### CONSENT

**ON** or about July 2, 2002, the Superintendent of Financial Services caused to be served on **Boehringer Ingelheim (Canada) Ltd./Ltée** a Notice of Proposal dated July 2, 2002 to consent, pursuant to subsection 78(4) of the Act, to payment out of the **Boehringer Ingelheim (Canada) Ltd./Ltée Employees' Pension Plan, Registration No. 356162**, to **Boehringer Ingelheim (Canada) Ltd./Ltée** in the amount of \$1,351,669.22 as at January 16, 2002.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the **Boehringer Ingelheim (Canada) Ltd./Ltée Employees' Pension Plan, Registration No. 356162**, of \$1,351,669.22 as at January 16, 2002, to **Boehringer Ingelheim (Canada) Ltd./Ltée**.





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act, consenting to a payment out of the **Wajax Industries Limited Pension Plan, Registration No. 281006;**

**TO:** **Wajax Limited**  
3280 Wharton Way  
Mississauga Ontario L4X 2C5

**Attention:** Barbara Haddad  
Manager, Compensation & Benefits

DATED at Toronto, Ontario, this 22nd day of August, 2002.

Tom Golfetto  
Director, Pension Plans Branch  
By Delegated Authority from the  
Superintendent of Financial Services

#### CONSENT

**ON** or about June 12, 2002, the Superintendent of Financial Services caused to be served on Wajax Limited a Notice of Proposal dated June 10, 2002, to consent, pursuant to subsection 78(4) of the Act, to payment out of the Wajax Industries Limited Pension Plan, Registration No. 281006, to Wajax Limited in the amount of \$21,160.44 as at November 30, 2001, plus investment earnings thereon to the date of payment.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Wajax Industries Limited Pension Plan, Registration No. 281006, of \$21,160.44 as at November 30, 2001, plus interest at the fund rate of return thereon to the date of payment, to Wajax Limited.





## **Declaration that the Pension Benefits Guarantee Fund Applies to Pension Plans — Subsection 83(1) of the PBA**

**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended by the

*Financial Services Commission of Ontario Act*,  
1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the  
Superintendent of Financial Services to Make a  
Declaration under Section 83 of the *Pension  
Benefits Act*, as amended by the *Financial Services  
Commission of Ontario Act*, 1997, S.O. 1997, c.28,  
respecting the **Revised Pension Plan for  
Employees of the Employer (the "Pension  
Plan")**, **Registration Number 0224923**;

**TO:** **The Canada Life Assurance  
Company**  
330 University Avenue  
Toronto ON M5G 1R8

**Attention:** Ms. Milica Stojšin  
Plan Wind-up Consultant  
**Administrator of the Revised  
Pension Plan for Employees  
of the Employer**

**AND TO:** **Brown & Collett Limited**  
2365 Matheson Blvd.  
Mississauga ON L4W 5C2

**Attention:** Mr. R.W. Bernard  
Controller  
**Employer**

**AND TO:** **PricewaterhouseCoopers Inc.**  
**(formerly Price Waterhouse  
Limited)**  
5700 Yonge Street  
Suite 1900  
North York ON M4M 4K7

**Attention:** Mr. Craig Munro  
**Receiver and Trustee in  
Bankruptcy for Brown &  
Collett Limited**

### **DECLARATION**

#### **WHEREAS:**

1. The Revised Pension Plan for Employees of the Employer, Registration Number 0224923 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund"), by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective March 1, 1996; and
4. The Superintendent of Pensions appointed Canada Life Assurance Company as the administrator (the "Administrator") of the Pension Plan on June 10, 1996; and
5. On February 26, 2002, I issued a Notice of Proposal dated February 15, 2002, to Make a Declaration that the Guarantee Fund applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89(6) of the Act, has been received.

**NOW THEREFORE TAKE NOTICE** I declare, pursuant to section 83 of the Act, that the PBGF applies to the Pension Plan for the following reasons:

1. The Supplement to the Actuarial Report filed by the Administrator indicates an estimated claim against the Guarantee Fund of \$436,300 as at March 31, 2002.
2. PricewaterhouseCoopers Inc. was appointed Trustee in Bankruptcy of Brown & Collett Limited on March 1, 1996 and as Receiver on April 22, 1996.



3. The Trustee in Bankruptcy has advised the Administrator that there are no funds available from the estate of Brown & Collett Limited to make payment to the Pension Plan.

DATED at North York, Ontario, this 5th day of July, 2002.

K. David Gordon  
Deputy Superintendent, Pensions



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c.28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28, respecting the **Retirement Plan for Salaried Employees of Airvector Inc. (the "Pension Plan")**, **Registration Number C-9339**;

**TO:** **Morneau Sobeco**  
Deloitte & Touche Inc.  
1500 Don Mills Road  
Toronto ON M3B 3K4

**Attention:** Mr. Al Kiel  
Partner  
**Administrator of the Retirement Plan for Salaried Employees of Airvector Inc.**

**AND TO:** **Airvector Inc.**  
201 Speers Road  
P.O. Box 430  
Oakville ON L6J 5A8

**Attention:** Camile Adib  
President  
**Employer**

## **DECLARATION**

### **WHEREAS:**

1. The retirement Plan for Salaried Employees of Airvector Inc., Registration No. C-9339 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, c.28, (the "Act"); and

2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund"), by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective December 31, 1986; and
4. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on March 20, 1997 and on August 11, 2002, appointed Morneau Sobeco as Administrator to replace Deloitte & Touche Inc.; and
5. On March 1, 2002, the Deputy Superintendent, Pension Division, issued a Notice of Proposal dated March 1, 2002, to Make a Declaration that the Guarantee Fund applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to sub-section 89 (6) of the Act, has been received.

**NOW THEREFORE TAKE NOTICE** I declare, pursuant to sections 83 and 89 of the Act, that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Addendum to the Actuarial Valuation Report filed by the Administrator indicates an estimated claim against the Guarantee Fund of \$258,900.00 as at December 31, 2001.
2. The place of business of the Employer is closed due to the bankruptcy of the Employer.
3. The Administrator has advised since the Employer is no longer in business, there are no further funds expected from the Employer or from any other sources for the Pension Plan.



DATED at North York, Ontario, this 25th day of  
July, 2002.

Tom Golfetto

Director, Pension Plans Branch

By Delegated Authority from the  
Superintendent of Financial Services





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c.28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28, respecting the **Staff Pension Plan for Hourly Paid Employees of Vulcan Packaging Inc. (the "Pension Plan")**, Registration Number 0379214;

**TO:** **Morneau Sobeco**  
Deloitte & Touche Inc.  
1500 Don Mills Road  
Toronto ON M3B 3K4

**Attention:** Mr. Al Kiel  
Partner  
**Administrator of the Staff Pension Plan for Hourly Paid Employees of Vulcan Packaging Inc.**

**AND TO:** **Vulcan Packaging Inc.**  
15 Bethridge Road  
Rexdale ON M9W 1M6

**Attention:** Mr. Alex Telfer  
President  
**Employer**

**AND TO:** **Ernst & Young Inc.**  
175 Commerce Valley Drive West  
Suite 600  
Thornhill ON L3T 7P6

**Attention:** Mr. Harold Reiter  
**Trustee in Bankruptcy, Vulcan Packaging Inc.**

**AND TO:** **CAW Local 1008**  
467 St. Clair Street  
Chatham ON N7L 3K6

**Attention:** Mr. Joe McCabe  
**Union**

**DECLARATION**

**WHEREAS:**

1. The Staff Pension Plan for Hourly Paid Employees of Vulcan Packaging Inc., Registration No. 0379214 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28 (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "PBGF"), by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective May 15, 1997; and
4. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on August 1, 1997; and
5. On February 15, 2002, I issued a Notice of Proposal dated February 12, 2002, to Make a Declaration that the PBGF applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to sub-section 89 (6) of the Act, has been received.

**NOW THEREFORE TAKE NOTICE** I declare, pursuant to sections 83 and 89 of the Act, that the PBGF applies to the Pension Plan for the following reasons:

1. The Supplement to the Actuarial Valuation Report filed by the Administrator indicates an estimated funding deficiency of \$861,100 as at August 1, 2001 and an estimated claim against the Guarantee Fund as at August 1, 2001 of \$768,500.



2. Ernst & Young Inc. was appointed Trustee in Bankruptcy of Vulcan Packaging Inc. on May 15, 1997.
3. The Administrator has advised that they filed a proof of claim for the asset shortfall but is of the opinion that no recovery will be realized of the proof of claim.

DATED at North York, Ontario, this 2nd day of August, 2002.

K. David Gordon

Deputy Superintendent, Pension Division



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act, relating to the **Retirement Plan for Employees of Pigott Construction Limited and Participating Companies, Registration Number C-4989;**

**TO:** **Buck Consultants Limited**  
Suite 1500  
95 Wellington Street West  
Toronto ON M5J 2N7

**Attention:** Ms. Wafaa Babcock, F.S.A., F.C.I.A.  
**Administrator**

**Pigott Construction Ltd.**  
P.O. Box 2309  
Hamilton ON L8N 3G7

**Attention:** W. Grant Dickinson  
Vice-President, Finance  
**Employer**

## **DECLARATION**

### **WHEREAS:**

1. The Retirement Plan for Employees of Pigott Construction Limited and Participating Companies (the "Plan"), is registered under the Act as Registration Number C-4989; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Plan was wound up by the Employer effective December 31, 1991; and
4. A wind up report was filed by the Employer; and the Superintendent of Pensions approved the wind up report on September 17, 1992; and

5. All benefits and surplus assets were paid out of the plan in 1992 with no assets remaining in the Plan; and
6. In the year 2000, a deferred vested member of the Plan, Colin Holland, claimed he was omitted in error from the disbursement of benefits on wind up, and provided evidence that he was entitled to a benefit upon wind up; and
7. Buck Consultants was appointed administrator of the Plan by the Superintendent of Financial Services on July 6, 2000; and
8. On July 15, 2002, the Deputy Superintendent, Pensions, issued a Notice of Proposal, dated July 12, 2002, to Make a Declaration that the Guarantee Fund applies to the Plan; and
9. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received.

**NOW THEREFORE TAKE NOTICE THAT I DECLARE**, pursuant to sections 83 and 89 of the Act, that the Guarantee Fund applies to the Plan for the following reasons:

### **REASONS FOR THE PROPOSED DECLARATION:**

1. Colin Holland was entitled to a benefit from the Plan upon wind up but never received it; and
2. A supplementary wind up report for the Plan as at April 30, 2002, reveals that to provide the benefit for Colin Holland and to meet the expenses and other allowances incurred in determining and distributing his entitlement, would require an amount of \$18,040 as at April 30, 2002; and
3. There are currently no assets in the Plan to provide the benefit entitlement of Colin Holland and other expenses; and



4. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.

DATED at North York, Ontario, this 9th day of September, 2002.

Tom Golfetto, Director

Pension Plans Branch

By Delegated Authority from the  
Superintendent of Financial Services





## Allocations of Money from the Pension Benefits Guarantee Fund

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28;

**AND IN THE MATTER OF** a Declaration by the Superintendent of Financial Services under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S. O. 1997, c.28, respecting the **Forest City International Trucks Ltd. Non-Contributory Retirement Plan (for Salaried Non-Managerial Non-Unionized Employees), Registration Number 597948;**

**TO: Ernst & Young Inc.**

222 Bay Street  
P.O. Box 251  
Toronto-Dominion Centre  
Toronto ON M5K 1J7

**Attention:** Philip Kan, Manager

**Administrator of the Forest City International Trucks Ltd. Non-Contributory Retirement Plan (for Salaried Non-Managerial Non-Unionized Employees)**

**AND TO: Forest City International Trucks Ltd.**

3003 Page Street  
London ON N5V 4J1

**Attention:** John Parliament, Controller  
**Employer**

### ALLOCATION

**WHEREAS** on the 23rd day of May, 2001, I declared, pursuant to sections 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S. O. 1997, c.28 (the "Act"), that the Pension Benefits Guarantee Fund (the

"PBGF") applies to the Retirement Benefit Plan for the Employees of Forest City International Trucks Ltd. Non-Contributory Retirement Plan (for Salaried Non-Managerial Non-Unionized Employees), Registration Number 597948 (the "Plan");

**NOW THEREFORE** I shall allocate from the PBGF and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed \$271,900 determined as of December 31, 2001, to provide, together with the Ontario assets for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the PBGF but not required to provide such benefits shall be returned to the PBGF.

DATED at North York, Ontario this 17th day of June, 2002.

K. David Gordon

Deputy Superintendent, Pensions  
Financial Services Commission of Ontario



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28;

**AND IN THE MATTER OF** a Declaration by the Superintendent of Financial Services under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S. O. 1997, c.28, respecting the **Retirement Benefit Plan for the Employees of Norman Wade Company Limited, Techniprint Services Limited and Norman Wade Management Limited, Registration Number 315176;**

**TO:** **Arthur Andersen Inc.**  
Suite 1050  
4 King Street West  
Toronto ON M5H 1B6

**Attention:** Mr. Lawrence A. Contant  
**Administrator**  
**United Steelworkers of America**  
1291 Matheson Boulevard East  
Mississauga ON L4W 1R1

**Attention:** Ms. Peggy McComb  
**Union**

### ALLOCATION

**WHEREAS** on the 28th day of August, 2001, I declared, pursuant to sections 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S. O. 1997, c.28 (the "Act"), that the Pension Benefits Guarantee Fund (the "PBGF") applies to the Retirement Benefit Plan for the Employees of Norman Wade Company Limited, Techniprint Services Limited and Norman Wade Management Limited, Registration Number 315176 (the "Plan");

**NOW THEREFORE** I shall allocate from the PBGF and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed \$371,800 to provide, together with the Ontario assets for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the PBGF but not required to provide such benefits shall be returned to the PBGF.

DATED at North York, Ontario this 17th day of June, 2002.

K. David Gordon  
Deputy Superintendent, Pensions  
Financial Services Commission of Ontario



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c.28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28, respecting the **Retirement Plan for Salaried Employees of Airvector Inc. (the "Pension Plan")**, Registration Number C-9339;

**TO:** **Morneau Sobeco**  
Deloitte & Touche Inc.  
1500 Don Mills Road  
Toronto ON M3B 3K4

**Attention:** Mr. Al Kiel  
Partner

**Administrator of the  
Retirement Plan for Salaried  
Employees of Airvector Inc.**

from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

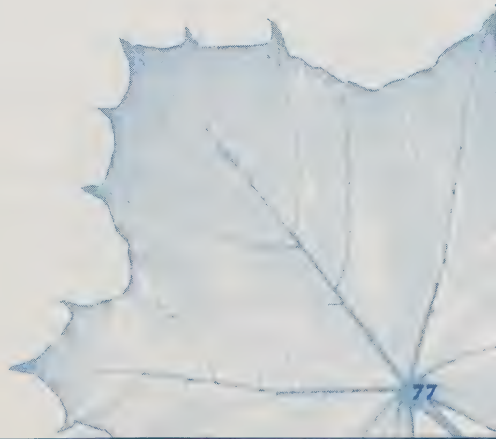
DATED at North York, Ontario, this 2nd day of August, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division

### ALLOCATION

**WHEREAS** on July 2002, I declared, pursuant to sections 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act"), that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Retirement Plan for Salaried Employees of Airvector Inc., Registration Number C-9339 (the "Pension Plan");

**NOW THEREFORE** I shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed \$258,900 which together with the Ontario assets of the Pension Plan, for the benefits determined in accordance with section 34 of the Regulation. Any money allocated





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c.28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28, respecting the **Staff Pension Plan for Hourly Paid Employees of Vulcan Packaging Inc. (the "Pension Plan")**, Registration Number 0379214;

**TO:** **Morneau Sobeco**  
Deloitte & Touche Inc.  
1500 Don Mills Road  
Toronto ON M3B 3K4

**Attention:** Mr. Al Kiel  
Partner

**Administrator of the Staff  
Pension Plan for Hourly Paid  
Employees of Vulcan  
Packaging Inc.**

### ALLOCATION

**WHEREAS** on August 2nd, 2002, I declared, pursuant to sections 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act"), that the Pension Benefits Guarantee Fund (the "PBGF") applies to the Staff Pension Plan for Hourly Paid Employees of Vulcan Packaging Inc., Registration Number 0379214 (the "Pension Plan");

**NOW THEREFORE** I shall allocate from the PBGF and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed \$768,500 which together with the Ontario assets of the Pension Plan, for the bene-

fits determined in accordance with section 34 of the Regulation. Any money allocated from the PBGF but not required to provide such benefits shall be returned to the PBGF.

DATED at North York, Ontario, this 2nd day of August, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Declaration by the Superintendent of Financial Services under section 83 of the Act relating to the **Retirement Plan for Employees of Pigott Construction Limited and Participating Companies, Registration Number C-4989;**

**TO:** **Buck Consultants Limited**  
Suite 1500  
95 Wellington Street West  
Toronto ON M5J 2N7

**Attention:** Ms. Wafaa Babcock, F.S.A., F.C.I.A.  
**Administrator**

**AND TO:** **Pigott Construction Ltd.**  
P.O. Box 2309  
Hamilton ON L8N 3G7

**Attention:** W. Grant Dickinson,  
Vice-President, Finance  
**Employer**

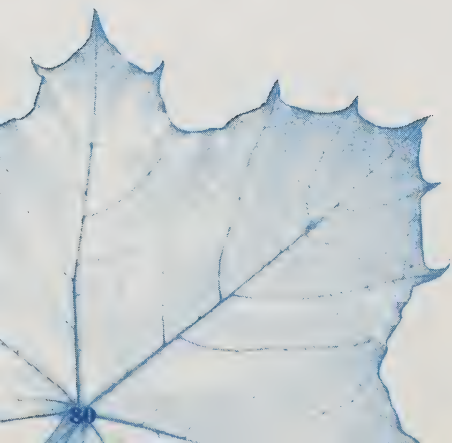
### ALLOCATION

**WHEREAS** on the 12th day of July 2002, I declared, pursuant to sections 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S. O. 1997, c.28 (the "Act"), that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Retirement Plan for Employees of Pigott Construction Limited and Participating Companies, Registration Number C-4989 (the "Plan");

**NOW THEREFORE** I shall allocate from the Guarantee Fund and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed \$18,040 to provide, together with the Ontario assets, if any, for the benefit entitlement of Colin Holland under the Plan, determined under subsections 34(5) and 34(6) of the Regulation, and to pay the reasonable administration costs of settling his entitlement. Any money allocated from the Guarantee Fund but not required to provide such benefit or costs shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 9th day of September, 2002.

K. David Gordon  
Deputy Superintendent, Pensions  
Financial Services Commission of Ontario





## TRIBUNAL ACTIVITIES

### Appointments of Tribunal Members

Name and O.C.	Effective Appointment Date	Expiry Date
<b>Milczynski</b> , Martha (Chair)		
O.C. 1622/2001	June 20, 2001	June 19, 2004
O.C. 1665/99	October 6, 1999	July 7, 2001
O.C. 1808/98	July 8, 1998	October 6, 1999
<b>McNairn</b> , Colin (Vice-Chair)		
O.C. 1623/2001	June 20, 2001	June 19, 2004**
O.C. 1809/98	July 8, 1998	July 7, 2001
<b>Corbett</b> , Anne (Vice-Chair Acting)		
O.C. 1438/2001	June 20, 2001	June 19, 2004**
<b>Ashe</b> , Kevin		
O.C. 1510/2002	September 26, 2002	September 25, 2005
<b>Bharmal</b> , Shiraz Y.M.		
O.C. 1511/2002	September 9, 2002	September 8, 2005
<b>Erlichman</b> , Louis		
O.C. 439/2002	January 23, 2002	January 22, 2005**
O.C. 2527/98	December 9, 1998	December 8, 2001
O.C. 1592/98	June 17, 1998	December 16, 1998
<b>Gavin</b> , Heather		
O.C. 440/2002	January 23, 2002	January 22, 2005**
O.C. 11/99	January 13, 1999	January 12, 2002
<b>Litner</b> , Paul W.		
O.C. 1512/2002	September 9, 2002	September 8, 2005
<b>Martin</b> , Joseph P.		
O.C. 1626/2001	June 20, 01	June 19, 2004**
O.C. 1810/98	July 8, 1998	July 7, 2001
<b>Moore</b> , C.S. (Kit)		
O.C. 1625/2001	June 20, 2001	June 19, 2004**
O.C. 1591/98	July 1, 1998	June 30, 2001
<b>Short</b> , David A.		
O.C. 2118/2001	October 24, 2001	October 23, 2004**
<b>Vincent</b> , J. David		
O.C. 2119/2001	October 24, 2001	October 23, 2004**
<b>Wires</b> , David E.		
O.C. 2166/99	February 26, 2000	February 25, 2003
O.C. 257/97	February 27, 1997	February 26, 2000

**\*\*Or on the day FSCO/OSC merges, if earlier**



## Pension Hearings Before the Financial Services Tribunal

### Imperial Oil Limited

**Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc. Registration Number 344002, FST File Number P0130-2000;**

On October 31, 2000, Imperial Oil Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated October 3, 2000, proposing to refuse to approve partial wind up reports in respect of two Plans of which Imperial Oil is the Administrator.

The stated reasons for the proposed refusal include the failure of each wind up report to do the following: (a) reflect the liabilities associated with all of the members of the Plan whose employment was terminated by Imperial Oil during the wind up period; (b) apply the grow-in provisions of section 74 of the *Pension Benefits Act* in a proper manner; (c) provide benefits in accordance with elections made, as required under subsection 72(1) of the *Pension Benefits Act*, among various options including those available as a result of partial wind up; and (d) provide for the distribution of assets related to the partial wind up group.

A pre-hearing conference was held on June 19, 2001. At the pre-hearing conference, the Superintendent agreed to amend the Notice of Proposal in this matter to delete reference to (d) above.

A hearing and preliminary motion with respect to answers to interrogatories was held on July 25, 2001. The Tribunal ordered the Superintendent to respond to the first and second set of the Applicant's interrogatories within six weeks of the date of the order subject to the qualification that the Superintendent need not produce any

documents or reveal any communications to which the law of privilege applies. Written Reasons for Order dated September 10, 2001, were published in Volume 11, Issue 1 of the Pension Bulletin.

A continuation of the pre-hearing conference was held on December 20, 2001. The pre-hearing conference was adjourned to allow the parties to bring motions with respect to answers to interrogatories. On July 24, 2002, the Tribunal heard two motions. The Applicant's notice of motion dated June 7, 2002, asked for an order of the Tribunal directing the Superintendent to provide further and better answers to some of its interrogatories. The Tribunal made an order directing the Superintendent to respond to certain of the interrogatories but with some modifications. Reasons for Order dated September 11, 2002, are published in this bulletin on page 102. The time for the Superintendent's response under this Order was extended by Consent Order dated October 22, 2002.

The Superintendent's notice of motion dated June 5, 2002, asked for an order of the Tribunal directing the Applicant to answer those interrogatories it had served on the Applicant on October 11, 2001, that remained outstanding. The Tribunal made an order directing the Applicant to respond to certain of the interrogatories but with some modifications. The Reasons for Order dated September 20, 2002, are published in this bulletin on page 120.

The pre-hearing conference is scheduled to resume on December 18, 2002.

**Marshall-Barwick (formerly Marshall Steel Limited), Registration Number 0968081, FST File Number P150-2001;**

On January 16, 2001, Marshall-Barwick Inc. (formerly Marshall Steel Limited) requested a hear-





ing in respect of the Superintendent's Notice of Proposal dated December 12, 2000. The Superintendent is proposing to refuse to approve a Partial Wind Up Report as at August 28, 1992, respecting the Retirement Plan for Salaried Employees of Marshall Steel Limited and Associated Companies in relation to employees who ceased to be employed by Marshall Steel Limited as a result of the closure of its plant in Milton, Ontario. The Superintendent's basis for the Notice of Proposal is that the Report does not protect the interests of all those affected by the partial wind up, specifically Mr. Jeffrey G. Marshall, an employee who was terminated during the wind up period. On June 4, 2001, Jeffrey G. Marshall applied for party status.

A pre-hearing conference was held on August 13, 2001, at which time Mr. Marshall was granted full party status. The hearing scheduled for November 29 and 30, 2001, was adjourned as a result of a joint request made by the parties on November 6, 2001. The reason for the request was due to the applicant providing Mr. Marshall with actuarial data in respect of Mr. Marshall's benefit entitlements. Mr. Marshall required additional time to obtain expert advice in respect of the information. The hearing was held on September 9, 2002. The decision is reserved.

#### **Independent Order of Foresters Fieldworkers, Registration Number 0354399, FST File Number P155-2001;**

On August 12, 2001, The Independent Order of Foresters ("IOF") requested a hearing with respect to the Superintendent's Notice of Proposal dated March 19, 2001, to refuse to consent to an application for the payment of the surplus of the IOF Fieldworkers Pension Plan to the employer. The Superintendent proposed to refuse consent on the basis that she

was not satisfied that the Plan had a surplus and provided for the payment of any surplus to the employer on the wind up of the Plan.

A pre-hearing conference was held on July 4, 2001, at which Mr. Irvin Grainger was joined as a party to the proceeding. The pre-hearing conference continued on July 27, 2001, at which time it was agreed that a settlement conference would be held on November 13, 2001. A motion by IOF for a determination of the appropriate manner and form of giving notice of the hearing in this matter was heard on December 7, 2001, by a panel of the Tribunal and was followed by a further continuation of the pre-hearing conference. At the motion hearing it was ordered that notice of hearing be by way of national newspaper publication, and that the notice also be provided by ordinary mail to all members and former members affected by the wind up. Written reasons for Orders made on December 7, 2001, were published in Volume 11, Issue 2 of the Pension Bulletin. On June 12, 2001, the Superintendent and IOF made a joint request that the hearing in this matter proceed in respect of the issue of whether the Plan provided for the payment of surplus to IOF, the employer, but that the hearing in respect of the issue of whether there was any surplus in the Plan be deferred. The request was granted and the panel held a hearing on the first of the two issues on June 18, 2002. The Tribunal concluded that the Plan did not provide for the payment of surplus to IOF. As it was unnecessary, therefore, to decide whether the Plan had a surplus, the Tribunal directed the Superintendent to carry out the proposal in the Notice of Proposal to refuse to consent to the payment of any surplus in the Plan to IOF. The Reasons for Decision dated September 16, 2002, are published in this bulletin on page 110.



**Camco Inc. Pension Plan Number 4, Registration Number 0583302 to Camco Inc. Pension Plan Number 7, Registration Number 0583336, FST File Number P160-2001;**

On May 14, 2001, Camco Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated March 30, 2001, to refuse to consent to a transfer of assets from the Camco Inc. Pension Plan 4, Registration Number 0583302 to the Camco Inc. Pension Plan No. 7, Registration Number 0583336.

The basis for the Notice of Proposal was that the asset transfer does not protect the pension benefits and other benefits of the former members of Plan 4 under subsection 81 (5) of the *Pension Benefits Act*.

A pre-hearing conference was held on September 24, 2001. The settlement conference scheduled for December 17, 2001, was rescheduled to February 7, 2002, after which settlement discussions continued. On September 10, 2002, the Tribunal was advised the parties have reached a settlement.

**Consumers Packaging Inc., Pension Plan II, Registration Number 0998682, FST File Number P162-2001;**

On May 17, 2001, Consumers Packaging Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated April 20, 2001, to refuse to approve a Partial Wind Up Report filed by Consumers Packaging Inc. on May 19, 2000, with respect to a partial wind up of the Consumers Packaging Inc. Pension Plan II, Registration Number 0998682, as at May 7, 1997, and to refuse to register an amendment to such Pension Plan filed by Consumers Packaging Inc. On May 19, 2000, titled Amendment # 2.

The basis for the Notice of Proposal was that Consumers Packaging Inc. filed a Partial Wind

Up Report in 1997. The Superintendent issued two Notices of Proposal in 1999 ordering Consumers Packaging Inc. to accept as members of the Plan certain replacement call-in employees and refusing to approve the 1997 Partial Wind Up Report on the grounds that the replacement call-in employees were not included in the Report and that "grow-in" to plant closure benefits was not provided to unionized hourly employees affected by the partial wind up. Consumers Packaging Inc. requested a hearing before the Financial Services Tribunal with respect to both Notices of Proposal. The hearing concerning the call-in employees was settled by the parties and Consumers Packaging Inc. accepted as members of the Plan those replacement call-in employees who met certain conditions. The hearing request regarding the "grow-in" benefits was withdrawn. Consumers Packaging Inc. was ordered to file an amended Partial Wind Up Report. In addition, in 1997, Consumers Packaging filed an application to register Amendment # 2 to the Plan which provided enhanced bridge benefits to some members.

On May 19, 2000, Consumers Packaging filed a revised Partial Wind Up Report (the "revised Report") and a revised application to register Amendment #2 (the "revised Amendment"). The Superintendent issued the April 20, 2001 Notice of Proposal stating reasons that the revised Amendment is void pursuant to clause 14(1)(c) of the *Pension Benefits Act*, and that the revised Report does not meet the requirements of the *Pension Benefits Act* pursuant to subsection 70(5), because the commuted value of the pension benefits and ancillary benefits for the affected members is calculated based on the revised Amendment, which is void under the Act. The revised Report does not protect the interests of the members and former members of the Plan for the same reason.





The Superior Court of Justice, Commercial List, issued an Order, dated May 23, 2001, stating that any suit, action, enforcement process, extra-judicial proceeding, regulatory, administrative or other proceeding against or in respect of Consumers Packaging Inc. already commenced be stayed and suspended until and including June 22, 2001. A further Order was issued on June 18, 2001, extending the stay period until August 15, 2001 and again until October 1, 2001. On October 1, 2001, a Pension Assumption Agreement was made. A pre-hearing conference was held on February 19, 2002.

A motion brought by Consumers Packaging for an order compelling the Superintendent to answer certain interrogatories was heard on April 18, 2002, at which time the motion was dismissed. The hearing was held on July 29 and 31, 2002. The decision is reserved.

**CBS Canada Co., Westinghouse Canada Inc. Pension Plan, Registration Numbers 348409 and 526632, FST File Number P164-2001;**

On June 8, 2001, CBS Canada Co., the successor to Westinghouse Canada Inc., requested hearings in connection with the Superintendent's Notices of Proposal dated May 9 and 15, 2001, to refuse to approve various Partial Wind Up Reports in respect of the Salaried Employees Pension Plan and the Hourly Paid Employees Pension Plan of Westinghouse Canada Inc. The partial wind ups were triggered by the closure by ABB Canada Inc. of its plants in London, Ontario; St. Jean, Quebec; and Burlington, Ontario, at which it carried on businesses acquired from Westinghouse Canada Inc., and by the closure by Westinghouse Canada Inc. of its Motors Division plant in Hamilton, Ontario. The basis for each Notice of Proposal was that the relevant Partial Wind Up Report failed to

provide employer request early retirement benefits and related bridge benefits, contemplated by each Plan, to all members of the partial wind up group whose age plus years of service equaled at least 55 and because the Report failed to provide for the distribution of surplus relating to the partial wind up group.

On June 19, 2001, CAW Canada, which represented the employees who were members of the Westinghouse Hourly Paid Employees Pension Plan, filed an application for party status in these proceedings. At a pre-hearing conference on November 5, 2001, CAW Canada was granted party status in the proceedings concerning the Notices of Proposal relating to the Hourly Employees Pension Plan and was given limited rights to participate in the proceedings concerning the Notices of Proposal relating to the Salaried Employees Pension Plan. The various proceedings were directed to be heard together.

At a continuation of the pre-hearing conference held on November 29, 2001, a hearing was scheduled for February 4-5, 2002 to deal with several jurisdictional issues to be brought on by motion of CBS Canada Co. Those issues included the following:

1. whether the Superintendent was entitled to rescind the initial approvals that she had given with respect to several of the Partial Wind Up Reports, for failure to adhere to the doctrine of fairness, and for which she subsequently substituted Notices of Proposal to refuse approval;
2. whether the Tribunal could direct the Superintendent to refuse approval of certain of the Wind Up Reports on the basis of a ground that was not specifically recited in the relevant Notices of Proposal;
3. whether the Tribunal could determine the responsibility for any special benefits



payable to the former Westinghouse employees at the facilities that were closed by ABB Inc. as between CBS Canada Co. and ABB Inc.; and

4. whether the Tribunal could order that ABB Inc. be added as a party to the proceedings against its will.

At the hearing on the jurisdictional motion, the Tribunal refused to order that ABB Inc. be added as a party, but otherwise reserved its determination of the issues raised by the motion. Reasons for Decision on the jurisdictional motion dated March 4, 2002, were published in Volume 11, Issue 3 of the Pension Bulletin.

The Applicant filed a notice of appeal dated April 3, 2002, with the Divisional Court of the Tribunal's Order dated March 4, 2002.

A settlement conference was held on August 7-8, 2002. On October 4, 2002, a motion hearing was held with respect to the Applicant's notice of motion dated September 25, 2002, asking for an order that the CAW respond to the Applicant's interrogatories dated September 25, 2002. At the motion hearing the parties agreed that the motion could be dealt with by way of a consent order and such an order was subsequently issued.

The hearing is scheduled for December 2-5 and 10-12, 2002.

#### **Samsonite Canada Inc.**

**Samsonite Canadian Service Related Pension Plan, Registration Number 398578, FST File Number P0166-2001 and FST File Number P175-2001;**

On July 3, 2001, Samsonite Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated June 1, 2001, to refuse to consent to the application of Samsonite Canada Inc., dated November 13,

2000, for the payment of surplus to the Employer under subsection 78(1) of the *Pension Benefits Act* from the Samsonite Canadian Service Related Pension Plan, Registration No. 398578.

On November 2, 2001, Samsonite Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated October 11, 2001, to refuse to consent to the application of Samsonite Canada Inc. dated November 13, 2000, for the payment of surplus to the Employer under subsection 78(1) of the *Pension Benefits Act* from the Samsonite Canadian Retirement Income Plan, Registration No. 373225.

At the pre-hearing conference held on November 9, 2001, the parties requested that these two matters be joined and heard together. The matters were joined and the hearing was held on June 3, 2002. At the hearing, the Tribunal gave the parties 30 days to file any additional written submissions. Final written submissions were filed June 21 and July 2, 2002. In its decision, the Tribunal affirmed each of the Superintendent's Notice of Proposals and directed the Superintendent to dismiss the Company's applications for surplus withdrawal. The Reasons for Decision dated October 21, 2002, are published in this bulletin on page 126.

#### **Imperial Oil Limited Retirement Plan, Registration Number 347054, FST File Number P0169-2001;**

In this matter, the Superintendent alleges that, effective April 28, 1995, Imperial Oil Limited ("IOL") sold its credit card operations to General Electric Capital Canada Inc. ("GE Capital"), at which time 37 individuals, who had been employed by IOL in that business and were members of the IOL Retirement Plan, became employees of GE Capital and members





of its Pension Plan, while maintaining their accrued benefits in the IOL Retirement Plan.

On August 3, 2001, the Superintendent issued Notices of Proposal to make Orders requiring:

- that the IOL Retirement Plan be wound up in relation to those members and former members of the Plan who ceased to be employed by GE Capital, between March 2000 and July 2000, as a result of the closure of its Markham, Ontario credit card facility; and
- that such members and former members of the IOL Retirement Plan be given credit for both age and service at the time they ceased to be employed by GE Capital when determining their benefits, in accordance with section 80(1)(c) of the *Pension Benefits Act*, under the IOL Retirement Plan.

On August 24, 2001, IOL requested a hearing in respect of these Notices of Proposal.

A pre-hearing conference was held on January 9, 2002. The evidence phase of the hearing was held on June 13, 2002 and the submission phase was held on August 1, 2002. In its decision, the Tribunal made orders:

- directing the Superintendent to carry out the proposal to order the wind up of the IOL Retirement Plan; and
- directing the Superintendent to refrain from carrying out the remaining proposal as it relates to determining benefits under section 4.3 of the IOL Retirement Plan.

The Reasons for Decision dated October 21, 2002, are published in this bulletin on page 131.

### **Stanley Canada Inc., Pension Plan for Designated Employees of Stanley Canada Inc., Registration Number 456897, FST File Number P0170-2001;**

On August 27, 2001, Stanley Canada Inc. requested a hearing with respect to the

Superintendent's Notice of Proposal dated July 26, 2001, to refuse to consent to the application for payment of surplus to the Employer dated April 1999, pursuant to section 78(1) of the *Pension Benefits Act*.

An Application for Party Status was filed on November 20, 2001, by Mr. Blaine Mitton, a Member of the Plan.

The pre-hearing conference scheduled for November 28, 2001, was rescheduled to January 10, 2002, at which time Mr. Mitton was granted party status. On January 11, 2002, an Application for Party Status was filed by Mr. Edward Holba, a Member of the Plan. The parties consented to Mr. Holba's Application for Party Status and full party status was granted by Order dated April 4, 2002. The May 2002 hearing dates were adjourned at the request of the parties for a motion to be brought by the Superintendent concerning expert evidence. The motion was heard on May 22, 2002. The hearing is scheduled for November 19, 2002.

### **Canadian Tack & Nail Ltd. Pension Plan for Salaried Employees, Registration Number 0581306, FST File Number P0171-2001;**

On September 14, 2001, Canadian Tack & Nail Ltd. requested a hearing regarding the Superintendent's Notice of Proposal dated August 14, 2001, to make an Order under section 87 of the *Pension Benefits Act*, requiring the Employer or Administrator of the Plan to remit within 30 days of receiving the Notice of Proposal, outstanding contributions in the amount of \$67,933 as of December 31, 1999, owed to the Pension Fund, together with interest payable under section 24 of Regulation 909 under the Act.

The basis for the Notice of Proposal is that subsection 87(2) of the Act allows the Superintendent to



make an order if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or fund is not being administered in accordance with the Act, the Regulations or the pension plan or if the employer, administrator of a pension plan, or any other person is contravening a requirement of the Act or the Regulations.

At a pre-hearing conference on February 7, 2002, the parties agreed to a settlement conference. At a settlement conference on June 27, 2002, the parties reached agreement and agreed to adjourn the hearing *sine die*. Any breach in the terms of the settlement gives the parties the right to ask that the pre-hearing conference be rescheduled.

**The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration Number 239475, FST File Number P0172-2001;**

On September 20, 2001, The Corporation of the City of Kitchener requested a hearing regarding the Superintendent's Notice of Proposal dated August 23, 2001, to refuse to consent to the application for payment of surplus to the employer, pursuant to section 78(1) of the *Pension Benefits Act*, from The City of Kitchener Pension Plan for Fire Department Employees, Registration No. 239475.

A pre-hearing conference was held on April 25, 2002, at which time the parties agreed to a settlement conference. The settlement conference date of July 16, 2002 was rescheduled at the parties' request and was held on September 4, 2002. The matter is adjourned *sine die*.

**Pension Plan for Employees of Proctor & Redfern Limited, Registration Number 0289579, FST File Number P0173-2001;**

On November 5, 2001, certain former employees of Proctor & Redfern Limited and members

of the Plan, requested a hearing regarding the Superintendent's Notice of Proposal dated October 3, 2001, to refuse to make an Order under sections 69 and 87 of the *Pension Benefits Act*. The Superintendent proposed:

- to refuse to make an Order that the Plan be partially wound up with respect to former employees of Proctor & Redfern Limited whose employment was terminated between and including 1994 and 1998;
- to refuse to make an Order that the former employees whose employment was terminated between and including 1994 and 1998, as well as former employees who had their pension benefits annuitized in 1998 and 1999, be included in the surplus sharing group;
- to refuse to make an Order that those employees are entitled to share in the surplus distribution on an equitable basis, and;
- to refuse to make an Order that Earth Tech (Canada) Inc. refund to the Plan any funds improperly withdrawn from the Plan to fund its own legal and actuarial costs.

The principal grounds for the proposals in the Notice of Proposal were that the requested Orders relating to the composition of the partial wind up group would expand that group beyond those who were properly entitled to participation in the group and that there was no evidence that Earth Tech (Canada) Inc. had improperly withdrawn funds from the Plan.

On November 26, 2001, Earth Tech (Canada) Inc., the successor to Proctor & Redfern Limited, applied for party status on the basis that it is the current administrator of the Plan and has a duty to ensure that the Plan is properly wound-up.

On February 21, 2002, Mr. Guy Boudaud applied for party status. Mr. Boudaud was an employee of Proctor & Redfern Limited and contributed to the Plan.



The pre-hearing conference scheduled for May 1, 2002, was rescheduled to August 26, 2002 and was further adjourned on consent to October 17, 2002. On October 16, 2002, the applicants withdrew the request for hearing.

**Retirement Pension Plan for Employees of Twin Oak Credit Union Ltd.,  
Registration Number 284257, FST File  
Number P0178-2002;**

On January 11, 2002, Twin Oak Credit Union Ltd. requested a hearing regarding the Superintendent's Notice of Proposal dated December 13, 2001, proposing to make an Order under section 87 of the *Pension Benefits Act*, with respect to Carol Joseph and any other part-time employee eligible for membership in the Plan. The Superintendent has proposed that the administrator of the Plan pay to Ms. Joseph her pension benefit determined on the basis that Ms. Joseph was eligible for membership and should have been enrolled in the Plan effective January 1, 1978. The Superintendent also proposed to order the administrator to provide, to any other part-time employee who was eligible to participate in the Plan, the monthly pension benefit determined on the basis that the part time employee was eligible for membership and should have been enrolled in the Plan effective January 1, 1978 or later if employed at a later date. The Superintendent also proposed that any lump sum owing to Ms. Joseph or any other eligible part-time employee representing retroactive payments shall also be credited with interest payable pursuant to subsection 21(11) of Regulation 909 made under the Act. Applications for Party Status were filed by Carol Lynne Joseph, Mary Lynn Feenan, Sharon Wiese, Donna Fredricks and Wendy Edmunds.

At the pre-hearing conference on April 24, 2002, full party status was granted to Ms. Joseph,

Ms. Feenan, Ms. Wiese and Ms. Fredricks. Party status was not granted to Ms. Edmunds.

The parties agreed to a settlement conference which was held on June 4, 2002. The parties also agreed that a preliminary motion will be brought to decide whether or not the Tribunal has the jurisdiction to deal with the proposed issue of whether or not the employer is entitled to a credit for payments made in lieu of benefits to part-time employees under collective agreements during the period January 1, 1978 to January 1, 1988 and whether the *Limitations Act* bars this proceeding. The Motion scheduled for November 6, 2002, did not proceed at the request of the parties as settlement discussions are ongoing. The hearing is scheduled for February 24, 26-28, 2003 and March 26-28, 2003.

**Marcel Brousseau, Electrical Industry  
of Ottawa Pension Plan, Registration  
Number 0586396, FST File Number  
P0183-2002;**

On February 20, 2002, Marcel Brousseau, a member of the Plan, requested a hearing regarding the Superintendent's Notice of Proposal dated January 22, 2002, to refuse to make an Order in respect of the Plan Administrator's determination pursuant to section 87 of the *Pension Benefits Act*, of Mr. Brousseau's pensionable service under the terms of the Plan.

A pre-hearing conference was held on August 27, 2002. At the pre-hearing conference, the Superintendent raised a jurisdictional issue. The parties agreed that the issue on the motion will be, "Given the November 19, 2001 decision of the Superior Court of Justice in Court File No. 01-CV-18268, does the Tribunal have jurisdiction to proceed in the circumstances of this case?". The motion is scheduled to be heard on November 29, 2002.





**Molson Canada, Molson Breweries Pension Plan for Operating Engineers, Registration Number 0390666; Molson Canada Pension Plan for Hourly Employees in Ontario and Atlantic Canada, Registration Number 0334094; and Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086, FST File Number P0187-2002;**

On June 7, 2002, Molson Canada requested a hearing regarding the five Notices of Proposal issued by the Superintendent each dated May 5, 2002, proposing to make Orders that the various Molson Canada Pension Plans be wound up in part.

The pre-hearing conference scheduled for October 28, 2002, was adjourned *sine die* on consent of the parties.

**Donna Marie Sloan, Ontario Teachers' Pension Plan, Registration Number 0345785, FST File Number P0188-2002;**

A survivor pre-retirement death benefit that was being paid to Donna Marie Sloan under the Plan was discontinued when the Ontario Pension Plan Board, the Administrator of the Plan, concluded that she was living separate and apart from her husband, the Plan member, at the time of his death, thereby disqualifying her from receiving the benefit. On March 4, 2002, the Superintendent issued a Notice of Proposal refusing to make an order, pursuant to section 87 of the *Pension Benefits Act*, requiring the Administrator to take action in respect of the Plan by reinstating the death benefit. On April 2, 2002, Donna Marie Sloan requested a hearing. On April 23, 2002, the Ontario Teachers' Pension Plan Board filed an Application for Party Status.

The pre-hearing conference scheduled for August 20, 2002 was adjourned *sine die* on con-

sent, pending settlement discussions between the parties.

**Bauer Nike Hockey Inc. Pension Plan for Employees of Bauer Nike Hockey Inc., Registration Number 257337, FST File Number P0189-2002;**

On April 3, 2002, Bauer Nike Hockey Inc., requested a hearing regarding the Superintendent's Notice of Proposal dated March 8, 2002, to refuse to approve the actuarial report prepared on December 23, 1998, in respect of the partial wind up as at November 1, 1998, submitted by Bauer Nike Hockey Inc., to the Superintendent under sections 70(5) and 89(4) of the *Pension Benefits Act*, relating to the Pension Plan for Employees of Bauer Nike Hockey Inc., Registration Number 257337.

At the pre-hearing conference on October 28, 2002, the matter was adjourned *sine die* pending the outcome of the *Monsanto* case.

**Kerry (Canada) Inc., Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0191-2002;**

On May 22, 2002, Kerry (Canada) Inc., requested a hearing regarding the Superintendent's Notice of Proposal dated April 22, 2002, proposing to make an order that Kerry (Canada) Inc.:

- reimburse the pension fund (the "Fund") of the Plan for all amounts paid out of the Fund from January 1, 1985 for expenses that were not incurred for the exclusive benefit of the members and retired members of the Plan;
- reimburse the Fund for all income that would have been earned by the Fund if those expenses had not been paid from the Fund; and
- amend the Plan and the trust (the "Trust") in respect of the Fund so that the provisions of





the Plan and the Trust relating to the deduction of expenses from the Fund are consistent with the 1954 versions of the Plan and the Trust.

On June 10, 2002, an application for party status was filed by William Fitz on behalf of the DCA Employees Pension Committee.

At the pre-hearing conference on October 15, 2002, full party status was granted to the individuals comprising the DCA Employees Pension Committee, representing the members and retired members of the Plan. The pre-hearing conference was adjourned to allow the parties to bring certain motions with respect to disclosure. The motion hearing is scheduled for December 6, 2002.

**DCA Employees Pension Committee and William Fitz, Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0192-2002;**

On May 27, 2002, William Fitz on behalf of the DCA Employees Pension Committee, requested a hearing regarding the Superintendent's Notice of Proposal, dated April 22, 2002, proposing to refuse to make an Order that:

- the Plan be wound up, effective December 31, 1994;
- Kerry (Canada) Inc. pay to the pension fund (the "Fund") of the Plan all employer contributions for which a contribution holiday was taken since January 1, 1985, together with income that would have been earned by the Fund if those contributions had been made; and
- registration of the Revised and Restated Plan Text dated January 1, 2000, and all amendments to the Plan included therein, be refused.

On June 5, 2002, an application for party status was filed by Kerry (Canada) Inc.

At the pre-hearing conference on October 15, 2002, full party status was granted to Kerry (Canada) Inc. The pre-hearing conference was adjourned to allow the parties to bring certain motions with respect to disclosure. The motion hearing is scheduled for December 6, 2002.

**Plumbers Local 463 Pension Plan, Registration Number 0598532, FST File Number P0190-2002;**

On May 16, 2002, the Board of Trustees of the Plumbers Local 463 Pension Plan Trust Fund (the "Board of Trustees"), requested a hearing regarding an Order, dated April 11, 2002, of the Deputy Superintendent, Pensions, made under subsection 106(13) of the Pension Benefits Act. In his Order, the Deputy Superintendent ordered that the Board of Trustees pay the cost of an examination, investigation or inquiry in respect of the Plan and pension fund for the Plan; and the cost of any opinion, report or professional attestation prepared following the examination, investigation or inquiry.

At the pre-hearing conference on October 7, 2002, the parties requested a settlement conference. At the settlement conference on November 14, 2002, the parties settled the matter.

**Robert Kerschbaumer (AFG Industries Ltd. Salaried Pension Plan, Registration Number 1070853), FST File Number P0197-2002;**

On September 4, 2002, Robert Kerschbaumer, requested a hearing regarding the Deputy Superintendent, Pensions, Notice of Proposal dated August 2, 2002, to make an Order under subsection 78(1) of the *Pension Benefits Act*, consenting to a payment out of AFG Industries Ltd., Salaried Pension Plan, Registration Number 1070853.



The pre-hearing conference date is scheduled for February 10, 2003.

### **Alan Bishop**

**(Contributory Pension Plan for Salaried Employees of McMaster University Including McMaster Divinity College 2000, Registration Number 1079920), FST File Number P0198-2002;**

On October 23, 2002, Alan Bishop, requested a hearing regarding the Deputy Superintendent, Pensions, Amended Notice of Proposal dated September 27, 2002, to make an Order under subsection 78(1) of the *Pension Benefits Act*, consenting to a payment out of the Contributory Pension Plan for Salaried Employees of McMaster University Including McMaster Divinity College 2000, Registration Number 1079920.

The pre-hearing conference date is pending.

**Slater Steel Inc. Pension Plan for Corporate Employees and Salaried Employees of the Hamilton Specialty Bar Division, Registration Number 308338, FST File Number P0203-2002**

On October 31, 2002, Slater Steel Inc., requested a hearing regarding the Deputy Superintendent, Pensions, Notice of Proposal dated September 27, 2002, to make an Order under section 69(1)(d) of the *Pension Benefits Act*, that the Plan be wound up in part in relation to those members and former members of the Plan who ceased to be employed by Slater Steel Inc. effective from March 13, 1998 to January 26, 2000 as a result of the reorganization of the business of Slater Steel.

The pre-hearing conference date is pending.



## The following cases are Adjourned *sine die*

- **Revised Retirement Plan for Employees of the Allen-Bradley Division of Rockwell International of Canada (now the Pension Plan for Employees of Rockwell Automation Canada Inc.), Registration Number 321554 and the Pension Plan for Salaried and Management Employees of Reliance Electric Limited, Registration Number 292946, FST File Number P0051-1999;** At a pre-hearing conference on July 6, 1999, the matter was adjourned *sine die*.
- **The Retirement Plan for Salaried Employees (Consumers Foods) of General Mills Canada, Inc., Registration Number 342042, FST File Number P0058-1999;** Matter continues to be adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Gerald Menard (Public Service Pension Plan, Registration Number 208777 and the Ontario Municipal Employees' Retirement System "OMERS", Registration Number 345983), FST File Number P0071-1999;** Matter adjourned *sine die* at a pre-hearing conference on February 21, 2000.
- **Consumers' Gas Ltd., Registration Number 242016, FST File Number P0076-1999;** At the pre-hearing conference on June 27, 2000, the matter was adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Schering-Plough Healthcare Products Canada Inc. Salaried Employees' Pension Plan, Registration Number 297903, FST File Number P0085-1999;** Matter was adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Eaton Yale Limited Pension Plan for Salaried Employees of Cutler-Hammer Canada Operations, Registration Number 440396, FST File Number P0117-2000;** At the request of the parties, this matter was adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Cooper Industries (Canada) Inc., Registration Number 0240622, FST File Number P156-2001;** The pre-hearing conference for May 27, 2002 was adjourned to a date to be set at the request of the parties, pending the outcome of the *Monsanto* case.
- **Pension Plan for the Employees of Dyment Limited, Registration Number 0242735, FST File Number P0157-2001;** The April 15 and 16, 2002 hearing dates were adjourned at the parties' request so that settlement discussions may continue.
- **Crown Cork & Seal Canada Inc. Registration Numbers 474205, 595371 & 338491, FST File Number P0165-2001;** The parties agreed to adjourn this matter *sine die* pending discussions between the parties.
- **James MacKinnon (Labourers' Pension Fund of Central and Eastern Canada), Registration Number 573188, FST File Number P0167-2001;** On July 10, 2002, the hearing dates were adjourned *sine die* on consent of the parties.



## Financial Hardship

Application to the Superintendent of Financial Services for Consent to Withdraw Money from a Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund based on Financial Hardship.

<b>FST File Number</b>	<b>Superintendent of Financial Services' Notice of Proposal</b>	<b>Comments</b>
U0193-2002	To Refuse to Consent, dated June 24, 2002	Reasons for Decision, dated August 29, 2002
U0194-2002	To Refuse to Consent, dated July 8, 2002	Reasons for Decision, dated August 29, 2002
U0196-2002	To Refuse to Consent, dated June 26, 2002	Withdrawn, September 26, 2002
U0200-2002	To Refuse to Consent, dated September 23, 2002	Written Submissions Being Exchanged
U0202-2002	To Refuse to Consent dated October 7, 2002	Written Submissions Being exchanged

## Decisions to be Published

LECO

Imperial Oil (1)

Imperial Oil (2)

Independent Order of Foresters

Samsonite Canada Inc.

U0193-2002 Reasons

U0194-2002 Reasons





## Financial Services Tribunal Decisions with Reasons

<b>INDEX NO.:</b>	FST File Number LECO
<b>PLAN:</b>	Revised Pension Plan of Leco Inc., Registration Number 272849
<b>DATE OF DECISION:</b>	June 17, 2002
<b>PUBLISHED:</b>	Bulletin 12/1 and FSCO website

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8 and *Regulation 909*, R.R.O. 1990;

**AND IN THE MATTER OF** an application by McColl-Frontenac Petroleum Inc. for an amended consent of the Pension Commission of Ontario to payment of an amended amount of surplus from the Revised Pension Plan of Leco Inc., Registration Number 272849 (the "Plan");

**AND IN THE MATTER OF** a Hearing held by the Pension Commission of Ontario;

### **BEFORE:**

C.S. (Kit) Moore  
Chair

Don Collins  
Member

Judith Robinson  
Member

Joyce Stephenson  
Member

David Wires  
Member

### **HEARING DATE:**

May 31, 2002

### **HELD AT:**

Toronto, Ontario

## **THE DECISION, BACKGROUND AND REASONS**

### **THE DECISION**

At its meeting of May 31, 2002, the Pension Commission of Ontario (the "PCO") considered an application by McColl-Frontenac Petroleum Inc. (the "Company") for an amended consent pursuant to subsection 78(1) of the *Pension Benefits Act*, R.S.O. 1990 c.P.8 (the "Act") and section 8(2) of *Regulation 909*, R.R.O. 1990, as amended (the "Regulation"), to a payment of surplus to the Company. The payment requested represents the surplus assets attributable to the Ontario portion of the Plan, based on a statement prepared by the Company's actuary.

On May 31, 2002, the PCO consented, pursuant to subsection 78(1) of the Act and subsection 8(2) of the Regulation, to a payment of surplus to the Company, in the amended amount of \$637,581.54 as at December 31, 2000, plus investment earnings thereon to the date of payment.

The background and reasons for this decision are set out below.

### **BACKGROUND**

At an earlier meeting held June 26, 1997, the PCO had approved the Company's original application for payment of 100% of the Plan's surplus assets, in accordance with the procedural framework in the *Ontario Act* and pursuant to its powers as the "major authority" under the terms of the Memorandum of Reciprocal Agreement entered into in 1968 by the PCO,



the Régie des rentes du Québec (the "Régie") and other provincial pension authorities (the "Reciprocal Agreement").

The Plan included members with employment in Ontario and Québec, but the majority of active members reported to work in Ontario. Therefore, under the terms of the Reciprocal Agreement, the Plan was registered solely with the PCO which, as the major authority under the terms of the Reciprocal Agreement, had authority to make all decisions in relation to the Plan.

The Régie brought an application in the Superior Court of Justice Divisional Court (the "Court") for judicial review of the PCO decision. In August of 2000, the Court quashed the PCO's decision insofar as it affected Québec members, remitted the matter to the PCO for reconsideration, and directed the PCO to provide written reasons for any further decision.

On or about November 26, 1997, the Régie exempted itself from the operation of the Reciprocal Agreement in relation to the Plan. As a result, the PCO no longer has authority to make decisions about the Plan's surplus relating to Québec members, as the source of that authority was the Reciprocal Agreement.

In December of 2000, the PCO directed the Company to prepare a new report and amended application to the PCO. The Company's actuary prepared and submitted an actuarial statement identifying the liabilities and surplus assets relating to the Québec members, for use in the PCO's reconsideration of this matter.

## REASONS

The Court's quashing of the PCO's decision of June 26, 1997, and the Court's direction to the PCO, was only insofar as the decision affected Québec Plan members. We have not revisited that decision as it related to Ontario Plan members, nor did we require further notice to be served on those members, as they had been given notice of the Company's original application for refund of surplus assets. Also, as the Régie has exempted itself from the operation of the Reciprocal Agreement with respect to the Plan, we no longer have authority to make decisions regarding the Québec portion of the Plan. As a result, in reconsidering this matter, we directed our attention to the split of surplus assets between the Québec and Ontario portions of the Plan.

The Company's actuary provided a letter dated March 16, 2001, which included the following statement:

Proportionately 64.74% of the value of the benefit entitlements are attributable to Quebec members or beneficiaries. This letter can be used as the basis for

apportioning the final Plan surplus to the Plan liabilities of Quebec members and beneficiaries.

The Régie subsequently notified the Company, in a letter dated August 3, 2001, that the Régie would agree to supervise the windup process for Québec members in accordance with the contents of that letter. In a letter dated September 5, 2001, to the PCO, the Régie indicated they were satisfied with the proposed attribution, as set out in the actuary's March 16<sup>th</sup> letter. We are satisfied with this proposal for apportioning the Plan surplus, which will result in an attribution of 35.26% of Plan surplus, or \$637,581.54 as at December 31, 2000, to the Ontario portion of the Plan.



In making our decision, we noted that the interested parties or their representatives have been informed that this hearing would be held, and have been sent a copy of the PCO staff report dated April 8, 2002, prepared by Ms. Lynda Ellis. We are not aware of any objections raised to the Company's application for our amended consent.

In addition, all pension benefits for Ontario members, former members and other beneficiaries of the Plan have been paid. The application satisfies all other appropriate requirements of the Act and Regulation and the PCO's published policies in respect of such applications.

For these reasons, we give our amended consent to a payment of surplus to McColl-Frontenac Petroleum Inc., in the amended amount of \$637,581.54 as at December 31, 2000, plus investment earnings thereon to the date of payment.

DATED at Toronto this 17th day of June, 2002.

C.S. (Kit) Moore  
Chair

Judith Robinson  
Member

Don Collins  
Member

David Wires  
Member

Joyce Stephenson  
Member





**INDEX NO.:**

FST File Number U0193-2002

**DATE OF DECISION:**

August 29, 2002

**PUBLISHED:**

Bulletin 12/1 and FSCO website

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated June 24, 2002, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the Act;

## **REASONS**

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated June 24, 2002, that denied the Applicant access to funds associated with his Life Income Fund (the "locked-in account"). The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

**67.-(5)** Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if

the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that the low income circumstance of financial hardship prescribed by s. 87(1)7 of Regulation 909, R.R.O. 1990, as amended (the "Regulation") is not satisfied. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the application.
3. This application included information provided by the Applicant in Part 2A — Withdrawal Based on Low Income. An application submitted on this basis is subject to the circumstances of financial hardship set out in paragraph 7 of subsection 87(1) of the Regulation as follows:

**87.-(1)** The following circumstances of financial hardship are prescribed for the purposes of subsection 67(5) of the Act:

**7.** The owner's expected total income from all sources before taxes for the 12-month period following the date of signing the application is 66 ⅔ per cent or less of the Year's Maximum Pensionable Earnings ["YMPE"] for the year in which the application is signed.

4. This application was signed in the year 2002, for which the Canada Pension Plan's YMPE was \$39,100, in which case 66 ⅔ per cent of the YMPE would be \$26,066.67. The Applicant has stated that his expected total income from all sources before taxes for the



12-month period following the date of signing the application is \$30,365.00, which exceeds \$26,066.67. In this case, the low income circumstances of paragraph 87(1)7 of the Regulation are not satisfied, with the result that the application does not meet the requirements of subsection 67(5) of the Act.

5. The Applicant has requested that an exception be made in this case, given the circumstances of his indebtedness and the amount of funds in his locked-in account. As noted in the Superintendent's submission, this Tribunal does not have authority to direct the Superintendent to allow an application for withdrawal from a locked-in account that does not meet the requirements of the Regulation. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated June 24, 2002, in respect of this application.

### **ORDER**

**The Superintendent's Notice of Proposal to Refuse to Consent, dated June 24, 2002, is affirmed and this application is dismissed.**

DATED at Toronto, this 29th day of August, 2002.

Mr. C.S. Moore  
Member, Financial Services Tribunal



**INDEX NO.:**

FST File Number U0194-2002

**DATE OF DECISION:**

August 29, 2002

**PUBLISHED:**

Bulletin 12/1 and FSCO website

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated July 8, 2002, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the Act;

## **REASONS**

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent, dated July 8, 2002, that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

**67.-(5)** Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if

the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "Current Application"), which was made on the basis of low income, was made within 12 months after the date of another successful application (the "Previous Application") made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

**89.-(4)** Only one application may be made during each 12-month period.

**(5)** An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the Current Application.
4. The Previous Application was signed by the Applicant on December 18, 2001. On January 2, 2002, the Superintendent consented to withdrawal of funds from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore, the Previous Application was a successful application.
5. On June 12, 2002, the Applicant signed the Current Application, in which she applied to withdraw additional funds from her locked-in account on the basis of low income. As this application was made within 12 months after the successful Previous



Application, which was made on the basis of low income, the Current Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

6. Although the Applicant's written submission provides compelling evidence of her financial hardship, this Tribunal does not have the authority to direct the Superintendent to allow an application that does not meet the requirements of the Regulation. Once 12 months have passed since the date of the successful Previous Application, a further application for withdrawal of locked-in funds may be submitted for consideration by the Superintendent, if the circumstances of the Applicant are such that she wishes to do so.
7. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated July 8, 2002, in respect of the Current Application.

### **ORDER**

**The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated July 8, 2002, directed to the Applicant.**

DATED at Toronto, this 29th day of August, 2002.

Mr. C. S. Moore

Member, Financial Services Tribunal



**INDEX NO.:**

FST File Number P0130-2000

**PLAN:**

Imperial Oil Limited Retirement Plan (1988),  
Registration Number 347054 (the "IOL Plan") and the  
Imperial Oil Limited Retirement Plan for Former  
Employees of McColl-Frontenac,  
Registration Number 344002 (the "MFI Plan")

**DATE OF DECISION:**

September 11, 2002

**PUBLISHED:**

Bulletin 12/1 and FSCO website

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act,  
R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** partial wind up  
reports submitted by Imperial Oil Limited to  
the Superintendent of Financial Services  
respecting the Imperial Oil Limited Retirement  
Plan (1988), Registration Number 347054 (the  
"IOL Plan") and the Imperial Oil Limited  
Retirement Plan for Former Employees of  
McColl-Frontenac, Registration Number 344002  
(the "MFI Plan");

**AND IN THE MATTER OF** a Hearing in accordance  
with subsection 89(8) of the Act;

**BETWEEN:****IMPERIAL OIL LIMITED****Applicant**

-and-

**SUPERINTENDENT OF FINANCIAL****SERVICES****Respondent****BEFORE:**

Mr. Colin H.H. McNairn  
Vice Chair of the Tribunal and Chair of the Panel

Mr. Louis Erlichman

Member of the Tribunal and of the Panel

Mr. William M. Forbes

Member of the Tribunal and of the Panel

**APPEARANCES:****For Imperial Oil Limited:**

Ms. Lindsay P. Hill

**For the Superintendent of  
Financial Services:**

Ms. Deborah McPhail

**HEARING DATE:**

July 24, 2002

**REASONS FOR ORDER****The Background**

This proceeding was initiated by the Applicant, Imperial Oil Limited, by filing a Notice of Request for Hearing with the Tribunal. The Request calls into question a Notice of Proposal by the Superintendent of Financial Services (the "Superintendent"), dated October 3, 2000, to refuse to approve partial wind up reports filed by the Applicant in connection with the partial wind up of two of its pension plans, namely its IOL Plan and its MFI Plan (the "Plans"). Those wind ups had been ordered by the Superintendent because of the reorganization of the Applicant and the





closure of one its refineries. The Plans were to be wound up in relation to those members and former members of the Plans who ceased to be employed by the Applicant, as a result of these actions, during the period beginning February 4, 1992 and ending on the later of June 30, 1995 and the date the last member employed at the refinery ceased employment (the "Partial Wind Up Period"). We refer to this group of members and former members as the "Partial Wind Up Group".

The stated grounds for the Notice of Proposal include the following;

- the reports do not reflect the liabilities associated with all of the members of the Plans whose employment with the Applicant was terminated during the Partial Wind Up Period; and
- the reports fail to provide "grow-in benefits," pursuant to section 74 of the Act, in respect of all members of the Plans affected by the partial wind ups who earned benefits while working in Ontario and whose combination of age and years of service with the Applicant is at least 55.

By a notice of motion dated June 29, 2001, the Applicant moved for an order of the Tribunal directing the Superintendent to answer certain interrogatories that it had posed and to produce the documents requested with those interrogatories (the "Initial Motion"). That motion was heard on July 25, 2001. The Tribunal disposed of the Initial Motion by order, dated September 10, 2001, directing the Superintendent to respond to the interrogatories and requests for production within six weeks of the order, subject only to the qualification that the Superintendent need not produce any documents or reveal any communications to which the law of privilege applies. That order was sup-

ported by written reasons of the Tribunal (see the Pension Bulletin, vol. 11, issue 1 (Jan., 2002), at pp. 155-160).

Following the order, the Superintendent provided responses to the interrogatories and requests for production by letters to counsel for the Applicant dated October 23, 2001 and November 15, 2001, but the Applicant has taken the position that the responses are deficient. Accordingly, by further notice of motion, dated June 7, 2002, the Applicant moved for an order of the Tribunal directing the Superintendent to provide further and better answers to certain of its interrogatories and to produce the documents referred to therein (the "Current Motion").

### **The Issues in the Proceeding**

For the purposes of both the Initial Motion and the Current Motion, the parties agreed that the issues in this proceeding that are relevant to the motions should be framed and grouped as follows:

#### **Issue 1**

(a) Did any members or former members of the Plans who ceased to be employed by the Applicant during the Partial Wind Up Period as set out in the Notice of Proposal cease to be employed as a result of the reorganization or discontinuance of all or part of the Applicant's business, if their circumstances fell within one of the following:

- (i.) employees whose fixed term contract of employment was complete by its terms (e.g. summer students, co-op students, and employees hired on a contract basis for a specified period of time);
- (ii.) employees who became disabled and received disability benefits;



- (iii.) employees who allegedly voluntarily resigned;
  - (iv.) employees who were transferred to an affiliated company that did not participate in the Plans;
  - (v.) employees who retired under the terms of the Plans at normal retirement age;
  - (vi.) employees who retired under the disability retirement provisions of the Plans;
  - (vii.) employees whose employment was terminated as a result of death; and
  - (viii.) employees whose employment was allegedly terminated for cause.
- (b) Do the doctrines of legitimate expectation, abuse or improper exercise of discretion or estoppel apply in the circumstances of this case with respect to the issue of which members or former members must be included in the Partial Wind Up Group?

## Issue 2

- (a) Does the Act require the "grow-in benefits" under section 74 be granted to members and former members of the Partial Wind Up Group who were employed in a province other than Ontario or Nova Scotia on the date that their employment ceased, in relation to any prior periods of employment with the Applicant in Ontario or Nova Scotia? If so, on what basis should such benefits be calculated?
- (b) If the answer to issue (a.) is "yes", can periods of employment in provinces other than Ontario or Nova Scotia be excluded when calculating the "grow-in benefits" under section 74 of the Act and section 79 of the *Pension Benefits Act* (Nova Scotia) payable to all members and former mem-

bers whose employment ceased in Ontario or Nova Scotia?

- (c) If the answer to issue (a.) is "yes", do the doctrines of legitimate expectation, abuse or improper use of discretion or estoppel apply in the circumstances of this case with respect to the calculation of "grow-in benefits" under section 74 of the Act and section 79 of the *Pension Benefits Act* (Nova Scotia) for members who ceased to be employees in the circumstances set out in issue (a.)?

There is a third issue that will have to be addressed at the main hearing in this proceeding, but none of the interrogatories or requests for production relate to that issue.

## The Interrogatories and Requests for Production

### Re: Issue 1

The first set of interrogatories and requests for production to which the Applicant continues to insist on responses or more complete responses can be summarized as follows:

- how many partial plan wind ups were ordered by the Superintendent during the period January, 1988 to October, 2000 (the "sample period") pursuant to,
  - paragraph 69(1)(d) of the Act (significant number of members of a plan ceasing to be employed as a result of discontinuance or reorganization of business),
  - paragraph 69(1)(e) of the Act (discontinuance of a significant portion of the business at a specific location)?
- how many situations were there in respect of such wind ups (ordered under each of the noted paragraphs of the Act) where employees were terminated during the Partial Wind Up Period for the following reasons:

- the expiry of a fixed term contract of employment;
  - disability;
  - voluntary resignation;
  - transfer to an affiliated company that did not participate in the Plans;
  - retirement at normal retirement age under the terms of the Plans;
  - death; and
  - cause for dismissal?
- how many wind up reports (in respect of wind ups ordered under each of the noted paragraphs of the Act) included employees in any such category in the partial wind up group?
  - did the Superintendent refuse to approve any partial wind up reports (in respect of wind ups ordered under each of the noted paragraphs of the Act) because the employees in any such category were not included in the relevant partial wind up group?

## Re: Issue 2

The second set of interrogatories and requests for production to which the Applicant continues to insist on responses or more complete responses can be summarized as follows;

- how many of the partial wind up reports filed with the Superintendent during the sample period provided, and how many did not provide, for “grow-in benefits” for employees who were employed in Ontario or Nova Scotia at some time but were employed elsewhere at the time their employment ceased and how many of the reports providing, and of the reports failing to provide, such benefits were approved and how many refused approval (giving the name and date of the plans in respect of which there was a refusal) and how many eliminated non-Ontario and

non-Nova Scotia service from their calculation of “grow-in benefits”?

- how many of the partial wind up reports, filed with the Superintendent during the sample period, included in the partial wind up group employees who were employed in Ontario or Nova Scotia when their employment ceased but were employed elsewhere during some period of their employment, how many of these reports did not provide for “grow-in benefits” to such employees in respect of their non-Ontario and non-Nova Scotia service, and how many of these reports were approved and how many refused approval (giving the name and date of the plans in respect of which there was a refusal)?
- provide copies of all memoranda, meeting notes and other documents prepared by the Superintendent and her staff and any prior practices regarding the provision of “grow-in benefits” to employees in the circumstances described in the first paragraph, including the reduction of benefits for non-Ontario and non-Nova Scotia service, and with respect to the reduction of “grow-in benefits” to employees in the circumstances described in the second paragraph.

## The Purpose

On the Initial Motion, the Applicant maintained that the responses to the interrogatories and the requests for production were relevant to the present case in the determination, particularly, of issues 1(b) and 2(c) referred to above. Among other things, they might reveal whether there was a practice on the part of the Superintendent,

- to permit the exclusion of any of the categories of plan members described in issue 1(a) from partial wind up groups,





- to treat final employment by a plan sponsor in Ontario or Nova Scotia, rather than employment by that plan sponsor at some time in Ontario or Nova Scotia, as the criterion for inclusion in partial wind up groups, or
- to reduce “grow-in benefits” on account of service outside Ontario or Nova Scotia.

The sample period of January, 1988 to October, 2000, to which a number of the interrogatories relate, was apparently chosen by the Applicant on the basis that “grow-in benefits” on a wind up were first added to the Act at the beginning of the period and the Notice of Proposal in this matter was issued at the end of the period.

### Analysis

The Superintendent filed an affidavit of Ms. Lynda Ellis, Manager, Technical Consulting of the Pension Plans Branch of the Financial Services Commission of Ontario, in response to the Current Motion, on which she was subject to cross-examination by the Applicant. In her affidavit, Ms. Ellis attests to the fact that, following the Tribunal’s decision on the Initial Motion, she went through the records of the Pension Plans Branch to determine how many partial wind ups were processed during the sample period and the state of the records with respect to those partial wind ups. As a result of that exercise, she determined that the records (which are partly paper and partly electronic) do not differentiate between partial wind ups that were ordered by the Superintendent and those that were not and do not disclose the paragraph of the Act that may have provided the basis for wind ups ordered by the Superintendent. She estimated that there were 1047 partial wind up cases, including both voluntary and directed wind ups, that were processed during the sample period. On cross-examination, Ms. Ellis said that the electronic

database of the Pension Plans Branch only reached back to the end of 1992 so that the figure of 1047 partial wind up cases included a “best guess” for that part of the sample period that preceded the electronic database.

To break down the partial wind up cases in order to determine those that are relevant to the interrogatories and to uncover any evidence of the Superintendent’s practices that the Applicant was after, it appears that all of the estimated 1047 files would have to be examined. Given the size of the files, ranging between a minimum of 75 pages and a maximum of several bankers’ boxes, Ms. Ellis estimated that it would take an experienced and trained employee of the Pension Plans Branch approximately 13 weeks (523 hours) to 26 weeks (1047 hours) of work to go through the files. She also noted that approximately 40% of the files were stored offsite in various locations and that, for this and other reasons, it would take about three weeks to assemble the files for review.

Of course, the Superintendent should have obtained all of the information that is now disclosed by Ms. Ellis’ affidavit before the hearing on the Initial Motion and put it into evidence on that occasion. That was not done and the only excuse that was offered at the hearing on the Current Motion was that the Superintendent was confident that the Initial Motion would not be successful. Had the information in the affidavit been available on the hearing of the Initial Motion, we might have been persuaded to limit the number of files to be reviewed for the purpose of answering the interrogatories and even if we had not imposed such a limit, the interrogatories could have been answered by now on the basis of a full review of the files on Ms. Ellis’ estimate of the time that would be involved in that review.





As we indicated in our reasons for decision on the Initial Motion, a threefold test is to be applied in determining whether answers to interrogatories and the disclosure of documents should be ordered, in particular:

- is the information sought arguably relevant to an issue in the proceeding that is not a frivolous issue,
- is the information sufficiently particularized to facilitate a response, and
- is the information of a kind that does not enjoy the benefit of privilege?

As this Tribunal said in its reasons for orders made in response to a motion to require the disclosure of documents and responses to interrogatories in *Monsanto Canada Inc. v. Superintendent of Financial Services* (see Pension Bulletin, vol. 8, issue 2 (Sept. 1999), at p. 79),<sup>1</sup> the Tribunal “should, generally, be prepared to make a disclosure order against a party to a proceeding before it, requiring the production of documents or answers to interrogatories” if the above noted test is satisfied (emphasis added).

On the Current Motion, the Superintendent maintained that there had been substantial disclosure, particularly in response to the Applicant’s second set of interrogatories (relating to issue 2), and that further disclosure was unnecessary to assist the Applicant in its expected arguments at the main hearing in this proceeding, that the information still being sought was irrelevant, and that any limited value of such information was outweighed by the onerous nature of the requests. The Applicant maintained that the Superintendent was, in effect, attempting to re-argue the Initial Motion which, it said, should not be permitted at this stage.

We do not think that substantial compliance with an order to respond to interrogatories or to

produce documents is sufficient and we are not prepared to re-open the question of the relevance of the information that is being sought by the Applicant. In our reasons on the Initial Motion, we concluded that the information sought by the Applicant, through the interrogatories and requests for production, was arguably relevant. However, we are prepared to consider, albeit it at this late stage of the process, the hardship involved in obtaining the information sought by the Applicant when set against the potential value of the information to the Applicant for the purpose for which it may be used in this proceeding. While that hardship was considered on the Initial Motion, it was on the basis of a general allegation of hardship, without the benefit of any precise evidence of that hardship, which has now been brought forward through Ms. Ellis’ affidavit.

We note that disclosure need not be “all or nothing” and should there be particular hardship in producing all the information that is arguably relevant, a practical solution may be to narrow the scope of the disclosure order (as in *First Choice Capital Fund Ltd. v. First Canadian Capital Corp.*, [2000] S.J. No. 574, at p. 5 (Sask. Q.B.)).

Having regard to the detailed evidence that we have now received, through Ms. Ellis’ affidavit, as to what would likely be involved in responding to the interrogatories about partial wind ups during the sample period, we think that the Superintendent should be entitled to respond on the basis of a review of one-half of the files on partial wind up cases that were processed during the period from January 1, 1993, the approximate date from which the electronic database was implemented, to October, 2000. The files to be reviewed should be selected on an arbitrary basis – in essence, every second file in the chronological, alphabetical or other neutral order in which the files are recorded on



the database so that the files reviewed will be a representative sample. If there is any dispute between the parties as to the appropriate method of selecting the files for review, the matter may be spoken to before the chair of the panel that has heard the Current Motion. We believe that this modified direction will provide information about the practices of the Superintendent with a sufficient degree of precision to enable the Applicant to use the information, depending on what it reveals, for the intended purpose.

Given the delays in this proceeding that have already occurred as a result of disputes by the Superintendent over the interrogatories and productions that are the subject of the Current Motion, we believe that the time for response to any new order that we make on this Motion should not extend beyond six weeks, which was the time for response to our order on the Initial Motion, even though this may impose some hardship on the Superintendent by requiring the diversion of considerable resources to providing a response in a timely manner.

We have yet to consider the third outstanding interrogatory with respect to Issue 2 — more accurately a request for production of documents, specifically memoranda, meeting notes and other documents relating to the Superintendent's position on the provision of "grow-in benefits" to employees who worked in Ontario or Nova Scotia at some time and outside those provinces at another time. The Superintendent has provided some material to the Applicant in response to this request, as enclosures with letters to counsel for the Applicant dated April 18, 2001 and October 23, 2001. In the second of these letters, the Superintendent's counsel has expressed a willingness to provide additional material in response to this request that consists of docu-

mentation indicating the approach taken by the Superintendent on two particular partial wind up cases, provided that the confidentiality of this material is maintained. We think that a reasonable assurance of confidentiality can be secured through an undertaking of confidentiality by the Applicant. Failing agreement on the terms of such an undertaking, the chair of this panel is prepared to entertain a motion for an order of confidentiality that is brought forward by either of the parties. Subject to the disclosure of this additional material, the Superintendent appears to have responded to our order on the Initial Motion as it relates to the disclosure of memoranda, meeting notes and other documents. However, the Applicant is entitled to persist in its request for the disclosure of this material so that the Superintendent continues the search for any additional material of this nature with a view to its disclosure before the deadline for responding to interrogatories and making productions that we impose in our order on the Current Motion.

Finally, the Applicant requested an order for the recovery of its costs on the Current Motion. We will deal with that request at the conclusion of the main hearing in this proceeding.

### **Disposition**

We order the Superintendent to respond to the interrogatories and requests for production to which the Applicant continues to insist on responses, as more particularly set out in Appendix "A" to the Applicant's notice of motion, within six weeks of the date of this order, subject only to the qualifications that the Superintendent need not produce any documents or reveal any communications to which the law of privilege applies and that the responses to the interrogatories may be based on a review of one half of the files on partial



wind ups that were processed during the period  
January 1993 to October 2000.

DATED at Toronto, Ontario, this 11th day of  
September, 2002.

Colin H.H. McNairn,  
Vice Chair of the Tribunal and Chair of the Panel

Louis Erlichman,  
Member of the Tribunal and of the Panel

William M. Forbes,  
Member of the Tribunal and of the Panel





**INDEX NO.:**

FST File Number P0155-2001

**PLAN:**

The Independent Order of Foresters Fieldworkers'  
Pension Plan,  
Registration No. 0354399 (the "Plan")

**DATE OF DECISION:**

September 16, 2002

**PUBLISHED:**

Bulletin 12/1 and FSCO website

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a proposal by the Superintendent of Financial Services (the "Superintendent"), pursuant to the Act, to refuse to consent to the payment of surplus out of The Independent Order of Foresters Fieldworkers' Pension Plan, Registration No. 0354399 (the "Plan");

**AND IN THE MATTER OF** a proposal by the Superintendent, pursuant to the Act, to refuse to approve a wind up report in respect of the Pension Plan;

**AND IN THE MATTER OF** a hearing in accordance with subsection 89(8) of the Act;

**BETWEEN:****THE INDEPENDENT ORDER OF FORESTERS****Applicant**

-and-

**SUPERINTENDENT OF FINANCIAL SERVICES** and**IRVIN GRAINGER****Respondents****BEFORE:**

Mr. Colin H.H. McNairn  
Vice Chair of the Tribunal and Chair of the Panel

Mr. Louis Erlichman

Member of the Tribunal and of the Panel

Ms. Heather Gavin

Member of the Tribunal and of the Panel

**APPEARANCES:****For The Independent Order of Foresters:**

Ms. Lisa J. Mills

Ms. Elizabeth Brown

**For the Superintendent of Financial Services:**

Mr. Mark Bailey

Ms. Deborah McPhail

**HEARING DATE:**

June 18, 2002

**REASONS FOR DECISION OF MR. MCNAIRN****Background**

This proceeding was commenced as a result of a request for hearing filed on April 12, 2001 by The Independent Order of Foresters (the "IOF") challenging a notice of proposal of the Superintendent of Financial Services (the "Superintendent") dated March 19, 2001 (the "Notice of Proposal"). In that Notice, the Superintendent proposes to refuse consent to an application by the IOF for the payment of surplus from the Independent Order of Foresters Fieldworkers' Pension Plan (the "Plan"), on its wind up effective December 31, 1997, and to refuse approval of the wind up report in respect





of the Plan filed by the IOF. The stated basis for the proposed refusals is two-fold;

- the IOF had not demonstrated that the assets in the pension fund, representing the excess over and above the basic benefit entitlements of members and former members of the Plan and the anticipated expenses of wind up, constituted surplus for the purposes of the *Pension Benefits Act*, as amended (the "Act"), and
- the assets held in the pension fund, including those excess assets, were subject to a trust for the benefit of the members, in which case the Plan could not be said to provide for the payment of surplus to the IOF.

The excess assets were estimated to have a value of \$1,433,760 as at December 31, 1999.

The IOF's application for the payment of surplus was made to the Superintendent on the basis that at least two-thirds of the Plan members had consented to a surplus distribution proposal under which the IOF would share in the surplus on a 50-50 basis with the members and former members of the Plan. Subsection 79(3) of the Act requires, among other things, that before an application for the payment of surplus on the wind up of a pension plan can be approved, the Superintendent must be satisfied that the pension plan has a surplus and the pension plan must provide for the payment of surplus to the employer on wind up.

The issue that was the subject of the hearing before the Tribunal is whether the Plan provides for the payment of surplus to the IOF. The Tribunal was invited by the parties to determine this issue on the assumption that the excess assets in the pension fund for the Plan represent surplus. The determination of whether the latter assumption is correct was left for a subsequent hearing as necessary.

## Analysis

### 1. The Nature of the Pension Fund at the Inception of the Plan in 1953

In his written representations, Mr. Grainger, a former member of the Plan who was granted party status in this proceeding, submitted that the amounts contributed by the IOF and the Plan members from time to time, pursuant to the Plan, and the income generated from those contributions (together comprising the "Pension Fund") constituted trust funds for the benefit of the members, who were, therefore, entitled to any surplus. This submission was based on a provision of the Plan to the effect that the Pension Fund was to be used only for the purpose of the payment of the benefits provided under the Plan. This exclusive benefit provision is found in subsection 7(2) of the original Plan and was carried forward in subsequent versions of the Plan. However, the Plan does not say specifically that the Pension Fund is to be held in trust nor does it make reference to a trustee in respect of that Fund. Indeed, the evidence in this case was that until 1995 the assets comprising the Pension Fund, although accounted for separately, were held as part of the assets of the IOF, in accordance with the Constitution and Laws of the IOF. One of the elements essential to the creation of a valid trust is an intention to create a trust. There was no evident intention, on the part of the IOF, to create a trust in respect of the Pension Fund upon the establishment of the Plan. An exclusive benefit provision similar to that contained in the Plan has been held to be insufficient, of itself, to establish such an intention; see *Schmidt v. Air Products Canada Ltd.*, [1994] 2 S.C.R. 611, at p. 666, and *Howitt v. Howden Group Canada Ltd.* (1999), 179 D.L.R. (4th) 423, at pp. 429-430 (Ont. C.A.).



I have concluded, therefore, that the Pension Fund was not subject to a trust at the inception of the Plan. Moreover, there were no changes to the Plan or to the funding of the Plan before 1995 that were alleged, by any of the parties, to have the effect of imposing a trust on the Pension Fund.

## 2. Entitlement to Surplus under the Original Plan

Section 9 of the original Plan provided as follows:

In the event of the discontinuance of the [P]lan, the [Pension] Fund shall immediately vest in the members and shall be distributed or otherwise dealt with for their benefit in such equitable manner as the Supreme Court [of the IOF] may with the advice of the actuary by resolution decide.

This provision remained in place without change until 1990, when the Plan was amended with effect from January 1, 1988. The validity of that amendment, as it purports to affect the above noted provision, is considered below (see section 3).

The authority of the Supreme Court of the IOF to decide, on the advice of the actuary, upon an equitable manner by which the distribution or other disposition of the Pension Fund should occur cannot reasonably be construed as giving the Supreme Court the power to direct any surplus in the Pension Fund to be applied for the benefit of the IOF. Rather, the Supreme Court's authority should logically be interpreted as simply allowing it to adopt a plan for the distribution or other disposition of the Pension Fund that provides in an equitable way for the determination of the extent of participation of the various members.

I have concluded that the Plan did not provide for the payment of surplus to the IOF and that this remained the position at the time of the

amendment to the Plan that was adopted in 1990.

## 3. The Validity of the Plan Amendment Providing for the Payment of Surplus to the IOF

The Plan was amended in 1990 with effect from January 1, 1988 (the "1988 Plan Amendment") to provide, among other things, for the payment of any surplus in the Pension Fund to the IOF. I refer to this particular provision of the 1988 Plan Amendment as the "1988 Surplus Amendment". The Superintendent challenged the 1988 Surplus Amendment as unauthorized, and therefore without effect, on two grounds.

First, the Superintendent maintained that the Plan was part of the Constitution and Laws of the IOF and, as such, could only be amended by the Supreme Court (now called the International Assembly) of the IOF. The 1988 Plan Amendment was apparently adopted by the Executive Council (now called the Board of Directors) of the IOF pursuant to a general delegation of authority by the Supreme Court to the Executive Council. Although there was some confusion in the evidence on this point, I have concluded that the Plan was not part of the Constitution and Laws of the IOF, although the Pension Fund was referred to therein as one of the IOF's funds. Accordingly, the Executive Council had the authority to amend the Plan under the general delegation of authority from the Supreme Court.

Second, the Superintendent maintained that there was no authority under the terms of the Plan to make amendments and the IOF could not, therefore, effect the 1988 Surplus Amendment unilaterally given that the Plan constituted a contract between IOF, as an employer, and its employees. In *Crownx Inc. v. Edwards* (1994), 120 D.L.R. (4th) 270, the Ontario Court of Appeal described the right to amend a pension plan as follows:



Whether one applies the law of trusts or the law of contract to pension plans, the right to later unilaterally amend the pension plan to provide for payment of surplus monies on termination must be found in the provisions of the original plan. It is trite to say that if the plan constitutes a contract between the employer and employees, the right of one party to make significant amendments to the contract at a later stage must be found expressly or by implication in the original contract. (At pp 280-281.)

In the present case, it is appropriate to apply contract principles in determining the authority of the IOF to make the 1988 Surplus Amendment since, as the Supreme Court of Canada stated in the *Schmidt* decision;

[I]f the pension fund, or any part of it is not subject to a trust, then any issues relating to outstanding pension benefits or to surplus entitlement must be resolved by applying the principles which pertain to the interpretation of contracts to the pension plan. (At p. 655.)

In *Schmidt*, the Supreme Court examined the amending power in a pension plan the fund of which was not subject to a trust (the Stearns plan) to determine whether an amendment to the plan providing for a reversion of surplus to the employer was valid (see [1994] 2 S.C.R. 611, at pp. 671-674). In that case, the amendment was found to fit within the express amending power and, therefore, to be effective.

In the present case, there was no amending power set out expressly in the Plan prior to 1990, when the 1988 Plan Amendment was adopted, nor can I find any basis for implying any such power that would be broad enough to authorize an amendment in the terms of the 1988 Surplus Amendment. This is not to say that the power to make some other kinds of amendments to the

Plan — say, to comply with income tax or pension legislation, to enhance benefits or to implement a collective agreement with a labour union — could not be implied or that the consent of the employees to some or all of those kinds of amendment could not be inferred. Given the effect on their entitlement to surplus on termination, the employees who were members of the Plan cannot, in my view, be presumed to have consented to the 1988 Surplus Amendment.

While the original Plan contemplates the discontinuance of the Plan (subsection 10(5)), that does not carry an implication that the IOF may also amend the Plan so as to reserve any surplus to itself. Indeed, as noted above, any discontinuance of the Plan was to be on the basis that the Pension Fund should immediately vest in the members and be distributed or otherwise dealt with for their benefit. If, as I have concluded, the 1988 Surplus Amendment was not within the scope of an amending power implicit in the Plan, that amendment is without effect and the treatment of surplus on the discontinuance of the Plan must be in accordance with the pre-Amendment provisions of the Plan. In particular, the surplus must be distributed or otherwise dealt with, as part of the Pension Fund, for the benefit of the members upon the wind up of the Plan that has now occurred.

I assume that the 1988 Plan Amendment was accepted for registration by the Superintendent, pursuant to the terms of the Act, although there was no evidence before us on this point. Such registration does not mean that the Amendment must, therefore, be treated as valid in its entirety. There is nothing in the Act, or the regulations under the Act to the effect that registration of an amendment cures any invalidity (see sections 12-17 of the Act and section 3 of Regulation 909, R.R.O. 1990, as to the registration of plan amendments).





My conclusion that the original provision of the Plan dealing with the treatment of the Pension Fund on discontinuance remained in effect at the wind up of the Plan disposes of the IOF's challenge to the Superintendent's Notice of Proposal. That provision requires that the Pension Fund, including any surplus, is to be applied for the benefit of the members of the Plan, with the result that the Plan cannot be said to provide for the payment of surplus to the employer, the IOF, on the wind up of the Plan. Therefore, the Superintendent is obliged, under subsection 79(3) of the Act, to refuse IOF's application for consent to the payment of surplus from the Plan. It follows, as well, that the Superintendent is entitled, under subsection 70(5) of the Act, to refuse to approve the report filed by the IOF in respect of the wind up of the Plan, for failure to protect the interests of the members of the Plan, in particular their interests in the surplus on wind up. Such refusals are, therefore, properly proposed by the Superintendent in the Notice of Proposal.

The other members of the Panel who heard this case would support the proposed refusals of the Superintendent on a different basis, as their separate reasons indicate, namely what they see as the overriding effect, upon the terms of the Plan, of the two successive trust agreements that the IOF entered into with respect to the Pension Fund. As I disagree with their reasons in that respect, I will go on to set out my views as to the impact of those agreements.

#### 4. The Effect of the Trust Agreements Entered into by the IOF as of 1995 and 1999

The IOF entered into a Trust and Master Custodial Services Agreement with the Trust Company of Bank of Montreal effective as of June 21, 1995 (the "1995 Trust Agreement") engaging the trust company to serve as trustee and to provide certain custodial services, all in

respect of the Pension Fund. Upon the resignation of the original trust company as trustee, the IOF entered into a similar agreement with CIBC Mellon Trust Company made as of October 1, 1999 (the "1999 Trust Agreement").

The Superintendent argued that, even if the 1988 Surplus Amendment was valid, its provision for the payment of surplus to the IOF was subservient to the trust in respect of the Pension Fund established, successively, by the 1995 and 1999 Trust Agreements. Since those Agreements did not expressly designate the IOF as a beneficiary of the trust, the IOF was no longer entitled, in the Superintendent's view, to the payment of surplus under the Plan. The IOF responded by saying that each of the Trust Agreements must be read in conjunction with the terms of the Plan, in which case it is clear that the IOF is identified as a person to which payments from the Pension Fund may be made and is, consequently, a beneficiary of the trust in respect of that Fund. The IOF argued, in the alternative, that each of the Trust Agreements expressly reserved to the IOF the power to revoke the trust, in which case it was within its power to bring the trust to an end, thereby effectively restoring the provision for the payment of surplus to the IOF under the 1988 Surplus Amendment.

The other members of the Panel, in their separate reasons rely on a passage from the majority decision of Mr. Justice Cory in *Schmidt* to the effect that the transfer of property by the settlor of a trust to the trustee is generally absolute and that any control of that property will be lost unless the transfer is expressly subject to it. However, the issue in the present case is not whether the IOF effectively reserved the power, under the terms of the Trust Agreements, to designate itself as a beneficiary of the trust when it transferred the Pension Fund to the trustee but whether





those terms indicate that the IOF was a beneficiary of the trust from the time of its creation.

The Superintendent was unable to provide us with any authority for the proposition that the settlor of a trust may not be a beneficiary of the trust unless expressly named as such or that a plan sponsor may not be a beneficiary of a trust in respect of a pension plan unless expressly named as such. I believe that the proper inquiry in the present case should be whether the IOF can be taken to be a beneficiary of the trust created by the Trust Agreements having regard to the express terms of those Agreements and any implications that can be reasonably drawn from those terms. Certainly, the absence of the word "beneficiary" in the Trust Agreements, to describe any interest the IOF may have in the Pension Fund, should not be determinative.

The Trust Agreements leave it to the IOF to provide instructions to the trust company as to the payments that are to be made from the Pension Fund. Any such instructions are deemed to constitute a "certification ... that such payments are in accordance with the ... Plan" (section 4(h) of the 1995 Trust Agreement and section 5.1 of the 1999 Trust Agreement). The Trust Agreements also provide that upon termination of the trust fund that comprises the Pension Fund, payments shall be made therefrom in accordance with the directions of the IOF (section 8 of the 1995 Trust Agreement and section 16.3 of the 1999 Trust Agreement), although in the case of the 1999 Trust Agreement those directions are to be in accordance with the terms of the Plan. To me, all of this means quite simply that the IOF is a beneficiary of the trust to the extent that the Plan provides for the payment of some part of the Pension Fund to the IOF. The 1988 Plan Amendment, which if valid is part of the Plan, makes such provision in respect of any surplus in that Fund.

The Trust Agreements make it clear that the role of the trust company as trustee does not extend to determining entitlements under the Plan. When it comes to the payment of amounts from the Pension Fund, the role of the trust company may be characterized as that of a "bare trustee" who must simply respond to the directions of the IOF. Therefore, with respect to distributions from the Pension Fund, the trustee acts, essentially, as an agent for the IOF, the settlor of the trust. In that kind of situation, the agency relationship with the settlor predominates over the trust aspect of the arrangement (see *Trident Holdings Ltd. v. Danand Investments Ltd.* (1988), 64 O.R. (2d) 65, at pp. 73-79 (Ont. C.A.)). Therefore, in the present case, the trust should not be taken to inhibit the right of the IOF to call for the payment to it of any surplus, in accordance with the Plan and, in particular, the 1988 Surplus Amendment, if valid.

The Superintendent relied on a statement of Mr. Justice Cory, giving the majority judgment of the Supreme Court in *Schmidt*, to the following effect;

...when a trust is created [in respect of a pension fund], the funds which form the corpus are subjected to the requirements of trust law. The terms of the pension plan are relevant to distribution issues only to the extent that those terms are incorporated by reference in the instrument which creates the trust. The contract or pension plan may influence the payment of trust funds but its terms cannot compel a result which is at odds with the existence of the trust. (At pp. 639-640.)

For the reasons set out above, I do not regard the Plan as compelling a result that is at odds with the trust established by the 1995 or 1999 Trust Agreement, but rather as having the capacity to influence payments from the



Pension Fund in a way that is not inconsistent with the trust. While neither Agreement may, technically, incorporate the terms of the Plan, I do not believe that this should preclude the operation of those terms in the circumstances of the present case, given the limited scope of the trust. Each of the Agreements certainly references the terms of the Plan, leaving them to govern the ultimate disposition of the assets in the Pension Fund. It seems to me that this comes to the same thing as incorporating the terms of the Plan by reference into the trust instrument.

Finally, I am of the opinion that each of the Trust Agreements provides expressly for the revocation of the trust that it creates and, therefore, that the IOF could exercise the power of revocation so as to leave the provisions of the Plan to operate unaffected by the existence of a trust in respect of the Pension Fund. Each of the Agreements provides specifically for the termination by the IOF of the trust fund comprising the assets of the Pension Fund (section 8 of the 1995 Trust Agreement and section 16.3 of the 1999 Trust Agreement). In either case, the relevant provision has a broad scope and is not limited to situations where the trust company has resigned or been removed and is to be replaced by a new trustee. It seems to me that a termination of a trust fund by the settlor amounts to the revocation of the trust and that there is no particular magic in the use of language of revocation as opposed to termination or cancellation. Indeed, The Supreme Court in *Schmidt* said that the word "revocation" connotes cancellation (at p. 646) and "termination" is certainly very close, in its ordinary meaning, to "cancellation". The revocation of something is simply the termination or cancellation of that thing where it was originally created by the person exercising a power of revocation. Unlike my

fellow Panel members, I can find nothing in *Schmidt* that suggests that an express power on the part of the settlor of a trust to terminate the trust fund does not amount to an express power to revoke the trust.

#### 5. The Remaining Significance of the Issue of Whether the Excess Assets in the Pension Fund Constitute Surplus

I agree with the other members of the Panel that it is not necessary for the Tribunal to hear argument on the issue of whether the excess assets in the Pension Fund represent surplus. If they do not, the Superintendent would have two proper grounds for refusing approval of the application for the payment of surplus and of the wind up report in respect of the Plan. If the excess assets do constitute surplus, the Superintendent's proposals to refuse those approvals are, nonetheless, supportable on the basis that the Plan does not provide for the payment of such surplus to the IOF. We are, therefore, in a position to dispose of the matter that is before us without the need for a further hearing on the issue of whether there is any surplus in the Pension Fund.

### Disposition

Although I disagree with the other Panel members in their conclusion as to the effect of the Trust Agreements, I concur in their ultimate disposition of this case. I reach that common result because of my conclusion that the 1988 Plan Amendment is invalid.

DATED at Toronto, Ontario, this 16th day of September, 2002.

Colin H.H. McNairn,  
Vice Chair of the Tribunal and Chair of the Panel



## **REASONS FOR DECISION OF MR. ERLICHMAN AND MS. GAVIN**

### **Background**

We adopt the Background as set out in the separate Reasons of Mr. McNairn.

### **Analysis**

The Superintendent and IOF asked the Tribunal to rule on the issue of whether the Plan provides for the payment of surplus to IOF. Since this is a necessary, though not sufficient, condition under subsection 79(3) of the Act, for any payment of surplus to the employer, a negative ruling on this issue would be determinative with respect to the Superintendent's Notice of Proposal, and no further hearing on the other issues would be required. In effect, if the Plan did not provide for the payment of surplus to IOF, the existence of a surplus and other possible issues arising in this case would be moot. A positive ruling could require a hearing of other issues.

Accordingly, the representations at this hearing focused quite narrowly on the language of the Plan text, trust agreements and other documents related to the pension plan. Counsel for both IOF and the Superintendent relied heavily on the leading Supreme Court of Canada case on pension plan surpluses, *Schmidt v. Air Products Canada Ltd.* [1994] 2 S.C.R. 611 (*Schmidt*).

In *Schmidt*, the Supreme Court said: "the first question to be decided in a pension surplus case is whether or not a trust exists" (p. 639).

In 1995, the IOF entered into a Trust and Master Custodial Services Agreement with the Trust Company of the Bank of Montreal, effective as of June 21, 1995 (the "1995 Trust Agreement") engaging the trust company to serve as trustee and to provide certain custodial services with respect to the Pension Fund. Upon the resignation of the original trust company as trustee,

the IOF entered into a similar agreement with CIBC Mellon Trust Company as of October 1, 1999 (the "1999 Trust Agreement").

It was not disputed by the parties that the pension plan was a pension trust from the time of 1995 Trust Agreement. In *Schmidt*, the Supreme Court said (at p. 643):

When a pension fund is impressed with a trust, that trust is subject to all applicable trust law principles. The significance of this for the present appeals is twofold. Firstly, the employer will not be able to claim entitlement to funds subject to a trust unless the terms of the trust make the employer a beneficiary, or unless the employer reserved a power of revocation of the trust at the time the trust was originally created. Secondly, if the objects of the trust have been satisfied but assets remain in the trust, those funds may be subject to a resulting trust.

The settlor of a trust can reserve any power to itself that it wishes provided the reservation is made at the time the trust is created. A settlor may choose to maintain the right to appoint trustees, to change the beneficiaries of the trust, or to withdraw the trust property. Generally, however, the transfer of the trust property to the trustee is absolute. Any power of control of that property will be lost unless transfer is expressly made subject to it.

IOF argued that, as the 1995 Trust Agreement names no specific beneficiaries and does not explicitly prohibit IOF from being a beneficiary, IOF was not precluded from being a beneficiary of the fund. Further, IOF cited the language of the trust agreement, which allowed it to instruct the trust company with respect to payments from the trust in accordance with the provisions of the pension plan, and to designate





the direction of trust property if the trust agreement were terminated, to argue that 1995 Trust Agreement gave IOF the power to designate itself a beneficiary of the trust.

The 1995 Trust Agreement defines the "Trust Fund" as "the securities or other properties delivered to or held by Trustco [Trust Company of the Bank of Montreal] from time to time and constituting the pension fund of the Pension Plan to be held as trust properties pursuant to the terms of this Agreement including the proceeds and income therefrom" (Paragraph 1(m)). The 1995 Trust Agreement also authorizes the Trust Company "to make payments ... in accordance with the provisions of the Pension Plan" (Paragraph 4(h)). Members of the pension plan are obviously beneficiaries of a pension trust set up to provide pension benefits to plan members. On the other hand, it cannot be assumed that the employer, IOF, is a beneficiary of the trust. This would require a clear statement in the 1995 Trust Agreement, and not the general powers given to IOF as plan administrator. As there was no such clear statement, IOF is not a beneficiary of the trust.

IOF argued that Section 22 of the 1995 Trust Agreement, which allowed IOF to direct the distribution of trust property on the termination of the trust agreement, had the effect of reserving for IOF the power to revoke the trust. This proposition does not accord with the *Schmidt* decision, in which the Supreme Court said (at p. 646) that the power to revoke cannot be read into a trust agreement without "extremely clear and explicit language." The Supreme Court continued:

A general amending power should not endow a settlor with the ability to revoke the trust. This is especially so when it is remembered that consideration was given by the employee beneficiaries in exchange

for the creation of the trust. In the case of pension plans, employees not only contribute to the fund, in addition they almost invariably agree to accept lower wages and fewer employment benefits in exchange for the employer's agreeing to set up the pension trust in their favour. The wording of the pension plan and trust instrument are usually drawn up by the employer. The employees as a rule must rely upon the good faith of the employer to ensure that the terms of the specific trust arrangement will be fair. It would, I think, be inequitable to accept the proposition that a broad amending power inserted unilaterally by the employer carries with it the right to revoke the trust. The employer who wishes to undertake a restricted transfer of assets must make those restrictions explicit. Moreover, amendment means change not cancellation which the word revocation connotes.

In fact, the Supreme Court specifically ruled, in *Schmidt*, that the power in the original trust document of the Catalytic pension plan to direct the distribution of trust funds on plan termination did not constitute a right of revocation.

IOF also argued that the pension plan text, which was amended in 1990 to provide for surplus to revert to IOF on plan wind-up, was implicitly incorporated into the 1995 Trust Agreement. As a result, it was argued, IOF was a beneficiary of the Plan, particularly with respect to surplus on wind up, at the time of the first trust agreement.

Here again, the Supreme Court set a high standard for the incorporation of pension plan language into the terms of a trust. To quote the *Schmidt* decision once more (at pp. 639-640):

The terms of a pension plan are relevant to distribution issues only to the extent that



those terms are incorporated by reference in the instrument which creates the trust. The contract or pension plan may influence the payment of trust funds but its terms cannot compel a result which is at odds with the existence of the trust.

In this case, the references within the 1995 Trust Agreement to the provisions of the Pension Plan can influence payments from the Pension Fund, but, in the absence of an explicit incorporation by reference, the terms of the Plan Text cannot be used to read either IOF's rights as a beneficiary or the right of revocation into the 1995 Trust Agreement.

The one other avenue by which IOF might claim entitlement to pension plan surplus is through the creation of a resulting trust, if the objects of the trust have been fully satisfied and money still remains in the trust fund. The clear object of this trust was to provide pension benefits to plan members. In a defined contribution plan, such as the IOF Plan, the object is to provide whatever benefits can be generated from contributions and investment earnings, and there is no reasonable basis for arguing that the object of the trust has been met, while assets remain in the trust. There is therefore no resulting trust created in this case.

We therefore conclude that, as IOF is not a beneficiary of the trust, nor does it have the power to revoke the trust, nor has a resulting trust been created, consequently the Plan does not provide for the payment of surplus to IOF.

In light of these conclusions, we see no need to deal with the other arguments raised by the parties concerning IOF's entitlement to surplus.

## Disposition

We direct the Superintendent to carry out the Notice of Proposal dated March 19, 2001, refusing to consent to an application by the IOF for

the payment of surplus from the Plan on its windup and to approve the wind up report in respect of the Plan.

DATED at Toronto, Ontario, this 16th day of September, 2002.

Louis Erlichman

Member of the Tribunal and the Panel

Heather Gavin

Member of the Tribunal and the Panel



**INDEX NO.:**

FST File Number P0130-2000

**PLAN:**

Imperial Oil Limited Retirement Plan (1988),  
Registration Number 347054 (the "IOL Plan") and the  
Imperial Oil Limited Retirement Plan for Former  
Employees of McColl-Frontenac,  
Registration Number 344002 (the "MFI Plan")

**DATE OF DECISION:**

September 20, 2002

**PUBLISHED:**

Bulletin 12/1 and FSCO website

*(Note: Only FST decisions pertaining to pensions are  
included in this section.)*

*(Note: In this section, "Commission" refers to the  
Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "Act");  
**AND IN THE MATTER OF** partial wind up  
reports submitted by Imperial Oil Limited to  
the Superintendent of Financial Services  
respecting the Imperial Oil Limited Retirement  
Plan (1988), Registration Number 347054 (the  
"IOL Plan") and the Imperial Oil Limited  
Retirement Plan for Former Employees of  
McColl-Frontenac, Registration Number 344002  
(the "MFI Plan");

**AND IN THE MATTER OF** a Hearing in accor-  
dance with subsection 89(8) of the Act;

**BETWEEN:****IMPERIAL OIL LIMITED****Applicant**

-and-

**SUPERINTENDENT OF FINANCIAL  
SERVICES****Respondent****BEFORE:**

Mr. Colin H.H. McNairn  
Vice Chair of the Tribunal and Chair of the Panel

Mr. Louis Erlichman  
Member of the Tribunal and of the Panel  
Mr. William M. Forbes  
Member of the Tribunal and of the Panel

**APPEARANCES:****For Imperial Oil Limited:**

Ms. Lindsay P. Hill

**For the Superintendent of  
Financial Services:**

Ms. Deborah McPhail

**HEARING DATE:**

July 24, 2002

**REASONS FOR ORDER****The Background**

This proceeding was initiated by the Applicant, Imperial Oil Limited, by filing a Notice of Request for Hearing with the Tribunal. The Request calls into question a Notice of Proposal by the Superintendent of Financial Services (the "Superintendent"), dated October 3, 2000, to refuse to approve partial wind up reports (the "Partial Wind Up Reports" or the "Reports") filed by the Applicant in connection with the partial wind up of two of its pension plans, namely its IOL Plan and its MFI Plan (the "Plans"). The partial wind ups had been ordered by the Superintendent because of a reorganiza-





tion of the Applicant and the discontinuance of one of its businesses brought about by the closure of a refinery. The Plans were to be wound up in relation to those members and former members who ceased to be employed by the Applicant, as a result of the reorganization or discontinuance, during the period beginning February 4, 1992 and ending on the later of June 30, 1995 and the date the last member employed at the refinery ceased employment (the "Partial Wind Up Period"). We refer to this group of members and former members as the "Partial Wind Up Group".

The stated grounds for the Superintendent's proposal in the Notice of Proposal include the failure of the Reports to reflect the liabilities associated with all those who were part of the Partial Wind Up Group. Specifically, the Notice of Proposal states that the Reports do not reflect the liabilities associated with 2311 members of the Plans (2213 members of the IOL Plan and 98 members of the MFI Plan).

By a notice of motion dated June 5, 2002, the Superintendent moved for an order of the Tribunal directing the Applicant to answer certain of the interrogatories that it had served on the Applicant on October 11, 2001. The Applicant has responded to some but not all of the original interrogatories.

### **The Issues in the Proceeding**

For the purposes of this motion, the parties agreed that the issues in this proceeding that are relevant to the motion should be framed as follows (the "statement of issues"):

Did any members or former members of the Plans who ceased to be employed by the Applicant during the Partial Wind Up Period as set out in the Notice of Proposal cease to be employed as a result of the reorganization or discontinuance of all or part of the

Applicant's business, if their circumstances fell within one of the following:

- (i.) employees whose fixed term contract of employment was complete by its terms (e.g. summer students, co-op students, and employees hired on a contract basis for a specified period of time);
- (ii.) employees who became disabled and received disability benefits;
- (iii.) employees who allegedly voluntarily resigned;
- (iv.) employees who were transferred to an affiliated company that did not participate in the Plans;
- (v.) employees who retired under the terms of the Plans at normal retirement age;
- (vi.) employees who retired under the disability retirement provisions of the Plans;
- (vii.) employees whose employment was terminated as a result of death; and
- (viii.) employees whose employment was allegedly terminated for cause.

There are other issues that will have to be addressed at the main hearing in this proceeding, but none of the interrogatories to which this motion relates concern those other issues.

### **The Interrogatories**

The interrogatories to which the Superintendent insists on responses can be summarized as follows:

- (a) did the positions filled by any members of the either of the Plans whose contracts of employment expired during the Partial Wind Up Period cease to exist as a result of the reorganization or discontinuance of the Applicant's business?



- (b) was any member of either of the Plans terminated for cause during the Partial Wind Up Period (if so, provide the name and last-known address of the member, the date and reason for termination and any supporting documentation)?
- (c) in the case of any member of either of the Plans who, during the Partial Wind Up Period,
- (i.) was on leave or other interruption of employment due to disability,
  - (ii.) retired under a disability retirement under the terms of either of the Plans,
  - (iii.) voluntarily terminated his or her employment,
  - (iv.) retired at early retirement under the terms of either of the Plans, or terminated for cause, was that member's job function or title eliminated during the reorganization or discontinuance of the Applicant's business?
- (d) did the Applicant ever re-hire, to permanent or contract positions, students who had worked with the Applicant on a co-op or summer placement; if so, how many were hired in the five year period prior to the wind up and how many of these assumed newly-created or entry-level positions; were any of the latter positions eliminated as a result of the reorganization or discontinuance of the Applicant's business; and in all of these situations what were the details?

### The Purpose

The Superintendent maintained that the purpose of the outstanding interrogatories was to elicit information that would be responsive to any argument of the Applicant that specific members or generic groups of members should be excluded from the Partial Wind Up Group,

for the purposes of calculating the liabilities to members in the Partial Wind Up Reports, and to simplify and narrow the issues in this proceeding. The Superintendent indicated that his position at the main hearing in this proceeding would be that all those members of the Plans who ceased to be employed by the Applicant during the Partial Wind Up Period should be included in the Partial Wind Up Group unless the Applicant can show cogent reasons why they should not be included.

### **Analysis**

The test that this Tribunal has consistently applied for deciding whether pre-hearing disclosure should be ordered is set out in *Monsanto Canada Inc, v, Superintendent of Financial Services* (see the Pension Bulletin, vol. 8, issue 2 (Sept., 1999), at pp. 77-82). In that case, the Tribunal said (at p. 79):

We believe that the Tribunal should, generally, be prepared to make a disclosure order against a party to a proceeding before it, requiring the production of documents or answers to interrogatories, in the following circumstances (if not in other circumstances):

- the information sought is arguably relevant to an issue in the proceeding and that issue is not a frivolous one;
- the information sought is sufficiently particularized that the party from whom the information is requested should be able to respond efficiently and with a reasonable degree of precision; and
- the information is not privileged.

For the purpose of applying the first limb of this test, relevance to an issue in the proceeding means relevance to an issue in the proceeding before the Tribunal, not the larger proceeding that includes the process that takes place before



the Superintendent, acting through one or other of the branches of the Financial Services Commission of Ontario.

Rule 19.01 of the Interim Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal describes the purpose of interrogatories as follows;

19.01 The Tribunal may issue procedural directions providing for interrogatories that are necessary to:

- (a) clarify evidence filed by a party;
- (b) simplify the issues;
- (c) permit a full and satisfactory understanding of the matters to be considered; or
- (d) expedite the proceeding.

Once again, the proceeding means the proceeding before the Tribunal.

The statement of issues that the parties have agreed to for the purposes of this motion presupposes that categorical answers can be provided as to whether all employees whose circumstances fall within any of categories (i.) to (viii.) can be said to have ceased to be employed as a result of the reorganization or discontinuance of all or part of the Applicant's business. But that may not be the case. For instance, this Tribunal might be inclined to the view that while the employees whose circumstances fall within a particular category should be excluded from the Partial Wind Up Group, there is a sub-category or sub-categories of those employees that should be included. One such sub-category might be employees whose positions, job titles or functions were eliminated during the reorganization or discontinuance of the Applicant's business. The answers to many of the Superintendent's interrogatories might inform the case for recognizing such a sub-category, or the case for not recognizing such a sub-category, as they

would reveal the dimensions of the potential sub-category.

All of this is not to suggest that the Superintendent has conceded that those employees whose circumstances fall within any of categories (i.) to (viii.) should, generally, be excluded from the Partial Wind Up Group, subject only to inclusion if their positions, job titles or functions were eliminated during the reorganization or discontinuance of the Applicant's business. In fact, there has been no such concession. Nonetheless, we think that the answers to the interrogatories are arguably relevant to the issues in this proceeding, although we think that it is sufficient if the Applicant were to respond by providing general or statistical, rather than employee-specific, information about the positions, job titles or functions of employees whose circumstances fall within each of categories (i.) to (viii.). That information would contribute to permitting a full and satisfactory understanding of the matters that may be considered in this proceeding and it could expedite the proceeding by avoiding the need for obtaining supplementary information at a later stage in the proceeding. The promotion of that understanding and the expedition of the proceeding are among the purposes of interrogatories set out in Rule 19.01 of the Interim Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal.

We now address the particular interrogatories posed by the Superintendent in light of the approach set out above. We deal with interrogatory (a.) in our discussion of interrogatory (c.) below. Interrogatory (b.) asks, among other things, whether any member of either of the Plans was terminated for cause during the Partial Wind Up Period. The Applicant has already answered "yes" to this question, in a letter dated February 28, 2002 to counsel for the





Superintendent, and has provided some particulars about the situations where members of the Plans were terminated for cause during the Partial Wind Up Period. We decline to order the Applicant to provide any further particulars of this kind as that information is member-specific and is not, in our view, arguably relevant to the issues in this proceeding.

Interrogatory (c.) would seem to call for information relating to each and every member falling within any of categories (i.) to (v.) whose job function or title was eliminated during the reorganization or discontinuance of the Applicant's business. The disclosure of such member-specific information is not, in our view, relevant to the issues in this proceeding. However, we would order the Applicant to respond to more general questions, by way of a revised interrogatory in place of interrogatories (a.) and (c.), as follows:

- how many of the 2311 members of the Plans who ceased to be employed by IOL during the Partial Wind Up Period but were excluded from the Partial Wind Up Group were in the circumstances described in each of the following categories:

- (i.) on fixed term contracts of employment that were complete by their terms (e.g. summer students, co-op students, and employees hired on a contract basis for a specified period of time);
- (ii.) on leave or other interruption of employment due to disability;
- (iii.) retired under a disability retirement under the terms of either of the Plans;
- (iv.) voluntarily terminated employment;
- (v.) retired at early retirement under the terms of either of the Plans; or
- (vi.) terminated for cause?

- what proportion of the members in category (i.) had their positions eliminated at or following the cessation of their employment with the Applicant but during the reorganization or discontinuance of the Applicant's business and what proportion of the members in each of categories (ii.) to (vi.) had their job titles or functions eliminated at or following the cessation of their employment with the Applicant but during the reorganization or discontinuance of the Applicant's business?

We recognize that the Superintendent may already have been advised, in respect of some or all of categories (i.) to (vi.), of the number of members whose circumstances fall within a particular category.

Interrogatory (d.) asks, among other things, whether the Applicant ever re-hired, to permanent or contract positions, students who had worked with the Applicant on a co-op or summer placement. The Applicant has already answered "yes" to this question, in a letter dated February 28, 2002 to counsel for the Superintendent. We decline to order the Applicant to provide a response to the balance of interrogatory (d.) as it does not seem to us to be arguably relevant to the issues in this proceeding.

## Disposition

Therefore, we make the order against the Applicant set out in Appendix A, directing it to respond to the Superintendent in respect of the interrogatories posed in that Appendix. The Superintendent requested that the time for the Applicant's response to the interrogatories be thirty days from the date of our order. However, we have set a time limit of six weeks from that date for response. This coincides with the time limit that we have imposed on the Superintendent, by order dated September 11, 2002, for



responses to outstanding interrogatories of the Applicant in this same proceeding.

DATED at Toronto, Ontario, this 20th day of September, 2002.

Colin H.H. McNairn,

Vice Chair of the Tribunal and Chair of the Panel

Louis Erlichman,

Member of the Tribunal and of the Panel

William M. Forbes,

Member of the Tribunal and of the Panel

## Appendix A

Imperial Oil Limited (the "Applicant") is hereby ordered to provide answers to the Superintendent of Financial Services in respect of the interrogatories set out below within six weeks of the date of this order:

- how many of the 2311 members of the Plans who ceased to be employed by IOL during the Partial Wind Up Period but were excluded from the Partial Wind Up Group were in the circumstances described in each of the following categories:
  - (i.) on fixed term contracts of employment that were complete by their terms (e.g. summer students, co-op students, and employees hired on a contract basis for a specified period of time);
  - (ii.) on leave or other interruption of employment due to disability;
  - (iii.) retired under a disability retirement under the terms of either of the Plans;
  - (iv.) voluntarily terminated employment;
  - (v.) retired at early retirement under the terms of either of the Plans; or
  - (vi.) terminated for cause?

- what proportion of the members in category (i) had their positions eliminated at or following the cessation of their employment with the Applicant but during the reorganization or discontinuance of the Applicant's business and what proportion of the members in each of categories (ii) to (vi) had their job titles or functions eliminated at or following the cessation of their employment with the Applicant but during the reorganization or discontinuance of the Applicant's business?

The capitalized terms in this order have the same meaning as those terms as used in the Reasons for Order of the Financial Services Tribunal that accompany, and provide the basis for, this order.

DATED this 20th day of September, 2002.



<b>INDEX NO.:</b>	FST File Numbers P0166-2001& P0175-2001
<b>PLAN:</b>	Samsonite Canadian Service Related Plan, Registration No. 398578 and Samsonite Canadian Retirement Income Plan, Registration No. 373225
<b>DATE OF DECISION:</b>	October 21, 2002
<b>PUBLISHED:</b>	Bulletin 12/1 and FSCO website

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services (the "Superintendent") to Refuse to Consent to an application by Samsonite Canada Inc. for the payment of surplus to the employer from the Samsonite Canadian Service Related Plan, Registration No. 398578 and a proposal by the Superintendent to Refuse to Consent to an application by Samsonite Canada Inc. for the payment of surplus to the employer from the Samsonite Canadian Retirement Income Plan, Registration No. 373225;

**AND IN THE MATTER OF** a Hearing in accordance with subsection 89(8) of the Act;

**BETWEEN:**

**SAMSONITE CANADA INC.**

**Applicant**

-and-

**SUPERINTENDENT OF FINANCIAL**

**SERVICES**

**Respondent**

## **BEFORE:**

Ms. Martha Milczynski

Chair of the Tribunal and of the Panel

Mr. David Short

Member of the Tribunal and of the Panel

Mr. William Forbes

Member of the Tribunal and of the Panel

## **APPEARANCES:**

### **For Samsonite Canada Inc.:**

Mr. Greg Winfield

### **For the Superintendent of Financial Services:**

Mr. Mark Bailey

## **HEARING DATES:**

June 3, 2002

## **REASONS**

### **INTRODUCTION**

Samsonite Canada Inc. (the "Company") has requested a hearing before the Financial Services Tribunal (the "Tribunal") with respect to two Notices of Proposal (together the "NOPs" and each the "NOP") issued by the Superintendent of Financial Services (the "Superintendent").

The NOP dated June 1, 2001 relates to the Company's application to the Superintendent to withdraw surplus from the Samsonite Canadian Service Related Plan, registration





No. 398578 (the "Hourly Plan"). As at the wind-up date, the Hourly Plan had surplus assets of approximately \$727,200. The Company proposed to distribute \$360,800 to Hourly Plan members and former members as benefit improvements, and \$366,400 was to be paid to the Company. The Company's proposal received consent from 88% of active members and 72% of inactive members.

The NOP dated October 11, 2001 relates to the Company's application to the Superintendent to withdraw surplus from the Samsonite Canadian Retirement Income Plan, registration No. 373225 (the "Salaried Plan"). As at the wind-up date, the Salaried Plan had surplus assets of approximately \$747,400. The Company proposed to distribute \$396,900 to Salaried Plan members and former members as benefit improvements, and \$350,500 was to be paid to the Company. The Company's proposal received consent from 93% of the active members and 79% of inactive members.

The Hourly and Salaried Plans were terminated by the Company effective January 31, 1998.

Each of the Superintendent's NOPs proposed to dismiss the Company's application to withdraw surplus on the grounds that the terms of the Hourly Plan and Salaried Plan do not provide for "payment of surplus to the employer on the wind-up of the pension plan", and that consequently, the applications' compliance with subsection 79(3)(b) of the *Pensions Benefits Act* (the "PBA") was not established.

For the reasons set out below, the Tribunal affirms the Superintendent's NOPs. Although each of the current versions of the Hourly and Salaried Plans contain provisions that provide for the Company's entitlement to surplus on plan termination, such provisions are the product of amendments made to the Plans in 1980 that are

contrary to the terms of the original (1969) Hourly and Salaried Plans and Trust documents. The original Plan documents expressly and irrevocably restricted the scope of the Company's authority or ability to amend the terms of the Hourly and Salaried Plans and/or to receive payment of surplus upon the Plans' termination.

### **PBA REQUIREMENTS FOR SURPLUS WITHDRAWALS**

The PBA and regulations establish a comprehensive regulatory regime for the withdrawal of surplus monies by employers from ongoing pension plans and from terminated pension plans. The regulatory requirements include provisions addressing notice to plan members and former members, the preparation and filing of valuation reports, and obtaining the requisite level of member/former member consent and, where applicable, the consent of any bargaining agent. The only issue concerning the Company's applications for surplus withdrawal from each of the Hourly and Salaried Plans, however, is whether or not the following PBA requirement was satisfied:

**ss. 79(3)** Subject to subsection 89 (hearing and appeal), the Superintendent shall not consent to an application by an employer in respect of surplus in a pension plan that is being wound up in whole or in part unless, ...

**(b)** the pension plan provides for payment of surplus to the employer on the wind up of the pension plan, ...

### **HOURLY AND SALARIED PLAN AND TRUST PROVISIONS**

The Hourly and Salaried Plans were originally established in 1969 and in addition to pension plan documentation, included a trust agreement for each of the plans with The Canada Trust Company.



The relevant provisions of the text of the original plan documents for the Hourly Plan and for the Salaried Plan are, in all material respects, identical. Subsections 5.1, 7.1 and 7.2 of the original Hourly and Salaried Plans provide as follows:

#### ARTICLE V: CONTRIBUTIONS AND FINANCING

5.1 The Company shall make annual contributions to the Trustee, on the basis of qualified actuarial advice, in the amount necessary to provide benefits earned under the Plan during the year, and shall pay administrative expenses incident to the operation and management of the Plan. Any unfunded liability, or experience deficiency arising from the funding of benefits herein provided shall be liquidated in the manner prescribed by the *Ontario Pension Benefits Act* of 1965 (including any amendments thereto) and related regulations, or other provisions of law applicable to the Plan.

The Company shall have no right, title, or interest in the contributions made by it to the Trustee, and no part of Plan assets shall revert to the Company except that any excess contributions as may have been made by the Company as a result of errors may revert to the Company.

The benefits of the Plan shall be only such benefits as can be provided by Plan assets, and there shall be no liability or obligation on the part of the Company to make any further contributions to the Trustee in the event of termination of the Plan except as otherwise provided under the *Ontario Pension Benefits Act* of 1965 (including any amendments thereto) and related regulations or other provisions of law applicable to the Plan. No liability for the payment of benefits under the Plan shall be imposed upon the Company or any officer, director or stockholder of the Company.

#### ARTICLE VII: AMENDMENT — TERMINATION — LIMITATION

7.1 The Company hopes and expects to continue the Plan indefinitely but necessarily reserves the right to amend or terminate the Plan at any time or from time to time for any reason.

No such action by the Company shall operate to recapture for the Company any contributions previously made under the Plan by the Company prior to the satisfaction of all liabilities for Plan benefits.

Except to the extent required to permit the Plan to meet the requirements of the *Ontario Pension Benefits Act* of 1965, as amended, the *Canadian Income Tax Act*, or the requirements of any governmental authority, no such action by the Company shall affect adversely in any way any rights previously acquired under the Plan by retired Participants.

7.2 In the event of the termination of this Plan, the assets then in the possession of the Trustee shall be allocated, subject to provision for expenses incident to said termination, to the extent that they shall be sufficient, for the exclusive benefit of the then retired Participants and all other Participants or former Participants and their beneficiaries having an interest in this Plan. Such assets shall, subject to approval of the Ontario Pension Commission, be allocated to such persons in the following order of precedence:

- (a) To provide for the continuance of Pensions to retired Participants and their beneficiaries, if any;
- (b) If any assets remain after complete allocations for the purposes of (a) above, they shall be allocated toward the potential rights of non-retired Participants or former Participants eligible for a normal, deferred, early, or disability pension on an equitable



and nondiscriminatory basis according to accepted actuarial principles;

- (c) If any assets remain after complete allocations for the purposes of (a), and (b) above, they shall be allocated toward the potential rights of non-retired Participants not included in the allocations under (a), and (b) above, on an equitable and nondiscriminatory basis according to accepted actuarial principles;
- (d) If any assets remain after complete allocations for the purposes of (a), (b), and (c) above, they shall be used to increase the benefits provided pursuant to the allocations made under (a), (b) and (c) above, on an equitable and nondiscriminatory basis according to accepted actuarial principles.

If the Ontario Pension Commission does not approve the foregoing method of allocation' then the method shall be modified, where necessary, so that such approval can be received.

The above allocations shall be distributed by the Trustee in annuities or in such other manner as may be agreed upon by the Company and the Trustee. No Participant or other Employee or person shall have any rights or claims under the Plan beyond the capacity of the assets held by the Trustee to provide benefits in accordance with the above provisions.

The Hourly and Salaried Plans' Trust Agreements were made as at April 1, 1969. Each agreement provided that assets in the trust fund were to be used for "the exclusive benefit of such persons or their estates as may from time to time be designated in or pursuant to the Plan". Each agreement also contained a provision that their terms could not be amended so as to "authorize or permit any part of the Fund to be used for or diverted to purposes other than for the exclusive benefit of such persons and their estates as from time to time may be designated in or pursuant to the Plan".

## ANALYSIS

The Company made submissions to the Tribunal that since inception and consistent with the original Hourly and Salaried Plan documentation, the Company was a "beneficiary" or "contingent beneficiary" under the terms of the Plans and Trust Funds and that therefore, the amendments made subsequently in 1980 to expressly provide for payment of surplus to the employer on plan termination were valid. The Company also made submissions that the 1980 amendments were consistent with the amending authority the Company reserved to itself in the original Plan and trust documentation. Such pension plan and trust provisions must, however, be express, unambiguous and clear to satisfy the "high bar" enunciated in *Schmidt v Air Products Canada Limited* [1994] 2SCR611. As the excerpts from *Schmidt* that are set out in *Kent v Tecsys International Inc.* (2000), 133 O.A.C. 312 (Ont. Div. Ct.) indicate:

Cory J. (for the majority) said:

Page 643: The Settlor of a trust can reserve any power to itself that it wishes provided that the reservation is made at the time the trust is created. The Settlor may choose to maintain the right to appoint trustees, to change the beneficiaries of the trust, or to withdraw the trust property. Generally, however, the transfer of the trust property to the trustee is absolute. Any power of control of that property will be lost unless the transfer is expressly made subject to it.

Page 647: As a result I find that, at least in the context of pension trusts, the reservation by the Settlor of an unlimited power of amendment does not include a power to revoke the trust. A revocation power must be explicitly reserved in order to be valid.

Page 656: The employer, as a Settlor of the trust, may reserve the power to revoke the





trust. In order to be effective, that power must be clearly reserved at the time the trust is created. The power to revoke the trust or any part of it cannot be implied from the general unlimited power of amendment.

Page 659: In my opinion, the purposes of the trust were not fully satisfied by the payment of all defined benefits. One of the objects of the trust was to use any money contained in the fund for the benefit of the employees.

In the case at hand, the Company did not satisfy the Tribunal that there was the clear and unambiguous language in either the Hourly or the Salaried Plan documentation that would permit the Company to participate in any distribution of surplus assets on Plan termination or that would permit an amendment to the Plans to be made subsequently, to give effect to such distribution. The requirements of Subsection 79(3)(b) of the PBA have not been met to the high standard required to establish employer entitlement to surplus.

## **ORDER**

Accordingly, the Tribunal affirms each of the Superintendent's NOPs and directs the Superintendent to dismiss the Company's applications for surplus withdrawal.

The Tribunal will remain seized for the purposes of considering either party's request for costs, such request and submissions to be made in writing within 30 days of this order.

DATED at Toronto, Ontario, this 21st day of October, 2002.

Martha Milczynski,  
Chair of the Tribunal and of the Panel  
William Forbes,  
Member of the Tribunal and of the Panel  
David Short,  
Member of the Tribunal and of the Panel

**INDEX NO.:**

FST File Number P0169-2001

**PLAN:**

Imperial Oil Limited Retirement Plan,

Registration Number 347054

**DATE OF DECISION:**

October 21, 2002

**PUBLISHED:**

Bulletin 12/1 and FSCO website

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services (the 'Superintendent') to Make an Order Requiring the Wind Up in Part of the Imperial Oil Limited Retirement Plan, Registration Number 347054 (the "IOL Plan");

**AND IN THE MATTER OF** a Proposal by the Superintendent to Make an Order with respect to the Calculation of Pension Benefits pursuant to section 87 of the Act, relating to the IOL Plan;

**AND IN THE MATTER OF** a Hearing in accordance with subsection 89(8) of the Act;

**BETWEEN:****IMPERIAL OIL LIMITED****Applicant**

-and-

**SUPERINTENDENT OF FINANCIAL SERVICES****Respondent****BEFORE:**

Mr. Colin H.H. McNairn

Vice Chair of the Tribunal and Chair of the Panel

Mr. William Forbes

Member of the Tribunal and of the Panel

Ms. Heather Gavin

Member of the Tribunal and of the Panel

**APPEARANCES:****For Imperial Oil Limited:**

Mr. J. Brett Ledger

Mr. Evan S. Howard

**For the Superintendent of Financial Services:**

Ms. Deborah McPhail

**HEARING DATES:**

June 13 and August 1, 2002

**REASONS FOR DECISION OF  
MR. MCNAIRN AND MR. FORBES****Statement of Facts**

Imperial Oil Limited ("IOL") sold its "Esso" branded consumer and small commercial credit card receivables to General Electric Capital Canada Inc. ("GE Capital") effective April 28, 1995. The purchase and sale agreement provided that GE Capital would establish a credit card program pursuant to which it would issue credit cards bearing the service mark "Esso". In November of 1995, in connection with the sale, 37 employees of IOL (the "Transferred Employees") became employees of GE Capital. The Transferred Employees were members of the Imperial Oil Limited Retirement Plan,



Registration Number 347054 (the "IOL Plan") and, upon their transfer, became members of a pension plan sponsored by GE Capital (the "GE Capital Plan"). The pension benefits accrued by the Transferred Employees prior to their transfer to GE Capital remained payable from the IOL Plan.

Upon assuming their new employment, the Transferred Employees changed their place of work from IOL's office building at 90 Wynford Drive in Don Mills, Ontario (the "Wynford Facility") to GE Capital's building at 600 Alden Road in Markham, Ontario, known as the "Toronto Business Centre". The Wynford Facility also housed other business operations of IOL and continued to do so following the sale of the credit card business to GE Capital.

Some of the employees of IOL who worked in the credit card business at the Wynford Facility and were members of the IOL Plan did not become Transferred Employees but lost their jobs as a result of the sale of the business. They were given severance packages by IOL, but there was no partial wind up of the IOL Plan in respect of those employees.

Around the end of 1997, the credit card business of GE Capital that was carried on at the Toronto Business Centre was transferred to GE Capital Canada Retailer Financial Services Company, an affiliate of GE Capital, and the employees engaged in the business, including the Transferred Employees who continued in the service of GE Capital, became employees of that affiliate.

The business carried on at the Toronto Business Centre related to both Esso and Petro-Canada credit cards. Commencing about the end of 1998, there was some integration of the business activities relating to the two credit card lines, which involved some of the Transferred

Employees doing work in relation to the Petro-Canada card, as well as the Esso card, and some of the other employees doing work in relation to the Esso card, as well as the Petro-Canada card.

At the same time as it operated its Toronto Business Centre, GE Capital maintained a billing and embossing unit for its credit card operations on Alden Road in Markham at a different municipal address from the Toronto Business Centre but in a building that, according to the evidence, "may have been across the parking lot" from that Centre. This facility provided services for the credit card business at the Toronto Business Centre, as well as for other credit card businesses of GE Capital.

Upon the conclusion of its credit card contracts with IOL and Petro-Canada, GE Capital discontinued the credit card business that it carried on at the Toronto Business Centre in July of 2000, resulting in the termination of the employees who worked at that location. The terminated employees included 32 remaining Transferred Employees from IOL. Of these, three employees were re-hired by IOL and their service with GE Capital was recognized for eligibility purposes under the IOL Plan. GE Capital then wound up the GE Capital Plan effective September 7, 2000.

On August 3, 2001, the Superintendent of Financial Services (the "Superintendent") issued a notice of proposal to make an order to wind up the IOL Plan in part — in relation to those members and former members who were employed by GE Capital at the Toronto Business Centre and who ceased employment with GE Capital between March 2000 and July 2000 as a result of the closure of that Centre (the "First Notice of Proposal"). The Superintendent issued a further notice of proposal, on the same date, proposing to make an order that the administrator of the IOL Plan give credit for both age and





years of service, as at the time of the closure of the Toronto Business Centre, to those members and former members of the IOL Plan who ceased employment with GE Capital between March 2000 and July 2000 as a result of the closure of the Toronto Business Centre, when determining entitlement to benefits under the IOL Plan (the "Second Notice of Proposal").

IOL filed Requests for Hearing by the Tribunal in respect of both Notices of Proposal on August 24, 2001. The hearings before the Tribunal relating to the two Notices of Proposal were heard together.

### Consideration of the Issues

There are two principal issues that the Tribunal must address in this case, the first relating to the First Notice of Proposal and the second relating to the Second Notice of Proposal.

#### **1. Whether the Superintendent is entitled in the circumstances of this case to make an order, under clause (e) of subsection 69(1) of the Pension Benefits Act, as amended (the "Act"), requiring the partial wind up of the IOL Plan.**

Subsection 69(1) of the Act describes the various situations in which the Superintendent may order a wind up, in whole or in part, of a pension plan. They include the following:

(d) a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer;

(e) all or a significant portion of the business carried on by the employer at a specific location is discontinued;

While the Superintendent relied initially on both of these clauses, as indicated in the First Notice of Proposal, reliance was limited to clause (e) at the hearing before this Tribunal. The Superintendent maintained that in this case the discontinuance of the credit card business at GE Capital's Toronto Business Centre could be attributed to IOL, as well as to GE Capital, with the result that the Superintendent was entitled to order the partial wind up of the IOL Plan in relation to those members who lost their employment due to that discontinuance of business and who were not re-employed by IOL.

The stated basis for the Superintendent's position in this case is the decision of the Pension Commission of Ontario (the "PCO") in *GenCorp Canada Inc. v. Ontario (Superintendent of Pensions)* (1994), PCO Bulletin 5/3 (Fall 1994) (Index No. XDEC-25), a case involving the application of clause (d) of subsection 69(1) of the Act. In *GenCorp*, a company was ordered to wind up its pension plan in part — in relation to those of its former employees whose employment was transferred in connection with the sale of the business in which they were engaged — when the successor company discontinued the business by closing the plant it had acquired on the sale, thus terminating the employment of the transferred employees. In that case, as in the present case, the transferred employees ceased to accrue benefits under the plan in question upon the sale but remained entitled to pension benefits under it that had accrued to the date of sale. The PCO concluded that the company that sold the business was deemed to continue as the employer of the transferred employees after the sale by virtue of what was then section 29 of the Act, a conclusion that was consistent with the broad definition of "employer" in section 1 of the Act. Therefore, the discontinuance of the business by the successor company, on



the closure of the plant, resulted in the termination of their deemed employment with the predecessor company (as well as their actual employment with the successor company), enabling the Superintendent to order the wind up of the predecessor company's pension plan, in relation to the transferred employees, under clause (d) of subsection 69(1) of the Act.

Appeals from the decision of the PCO were dismissed by the Divisional Court and the Court of Appeal, both of which found that the PCO's interpretation of the relevant provisions of the Act was reasonable and, therefore, should not be disturbed on review (see (1995), 26 O.R. (3d) 696 (Div. Ct.), and (1998), 39 O.R. (3d) 38 (C.A.)). The Court of Appeal also concluded that if the standard of review were correctness, rather than reasonableness, the PCO's interpretation was indeed correct.

Section 29 of the Act provided, among other things, that an employee is deemed not to have been terminated by reason of a sale of a business by the employer that is accompanied by a transfer of the employee to the acquirer of the business, who then becomes a successor employer (the "deemed continuation-of-employment provision"). This provision has been carried forward (with some modifications that are not material for present purposes) in section 80 of the Act. The latter section currently provides, in subsection (3), as follows;

(3) Where a transaction described in subsection (1) takes place, the employment of the employee shall be deemed, for the purposes of this Act, not to be terminated by reason of the transaction.

Subsections (1) and (2) of section 80 are to the following effect;

(1) Where an employer who contributes to a pension plan sells, assigns or otherwise dis-

poses of all or part of the employer's business or all or part of the assets of the employer's business, a member of the pension plan who, in conjunction with the sale, assignment or disposition becomes an employee of the successor employer and becomes a member of the pension plan provided by the successor employer,

- (a) continues to be entitled to the benefits provided under the employer's pension plan in respect of employment in Ontario or a designated province to the effective date of the sale, assignment or disposition without further accrual;
- (b) is entitled to credit in the pension plan of the successor employer for the period of membership in the employer's pension plan, for the purpose of determining eligibility for membership in or entitlement to benefits under the pension plan of the successor employer; and
- (c) is entitled to credit in the employer's pension plan for the period of employment with the successor employer for the purpose of determining entitlement to benefits under the employer's pension plan.

(2) Clause (1) (a) does not apply if the successor employer assumes responsibility for the accrued pension benefits of the employer's pension plan and the pension plan of the successor employer shall be deemed to be a continuation of the employer's plan with respect to any benefits or assets transferred.

The term "employer", which is used in both clause (d) and (e) of subsection 69(1) of the Act, is defined in section 1 of the Act as follows; "employer", in relation to a member or former member of a pension plan, means the person or persons from whom or the organization from which the member or former member receives



or received remuneration to which the pension plan is related, and "employed" and "employment" have a corresponding meaning;

The term is, thus, capable of covering a former employer of an individual as well as the current employer of the individual where that individual was and is a member of a pension plan in connection with his or her employment.

All but one of the arguments on the first issue in the present case related, essentially, to whether *GenCorp* should be taken to govern the outcome of this case or whether there are distinguishing features in this case that justify a different conclusion.

IOL maintained that the *GenCorp* decision should not dictate the result of the present case for a number of reasons, the first being a policy reason. IOL portrayed the policy objective underlying the decision in *GenCorp* — to order a partial wind up — as being the preservation of benefits (such as the "grow in benefits" mandated on a wind up) that the employees at the plant would have received had the plant simply been closed and not been transferred as a going concern along with those employees (indeed, the PCO placed some emphasis on this element of the case, see (1994), PCO Bulletin 5/3 (Fall 1994), at pp. 60 and 62). In that event, the employer could have been ordered to wind up the plan in relation to those employees, pursuant to clause (e) of subsection 69(1) of the Act, since it would have discontinued the business carried on by it at a particular location, namely the plant site. The partial wind up that was in fact ordered in *GenCorp* could, therefore, be said to be a "deferred wind up" that commended itself because it afforded an equitable result for the transferred employees. The same thing could not be said about any partial wind up that might be ordered in the present case

since there would have been no basis for a partial wind up had IOL simply discontinued the credit card business carried on at its Wynford Facility. Thus, any partial wind up of the IOL Plan upon GE Capital's discontinuance of the business was not, in any sense, a "deferred wind up" of the IOL Plan that simply preserved the opportunity for the Transferred Employees to participate in the benefits of a partial wind up (such as "grow in benefits") that they would have had if the business had been discontinued by IOL.

IOL also argued that the Superintendent's proposed partial wind up order in the present case was not only unnecessary to achieve an equitable result, but would create an inequity — as between those employees who lost their jobs on the sale of the business and their fellow employees who were transferred with the business. The former were never entitled to participate in a partial wind up of the IOL Plan while the latter would be so entitled under the Superintendent's order. But the same inequity may well have arisen in *GenCorp* for the statement of facts in the PCO decision in that case suggests that, as in this case, something short of all the employees were transferred with the business (see (1994), PCO Bulletin 5/3 (Fall 1994), p. 58), although it does not say whether any non-transferred employees simply lost their jobs or were offered alternative employment at another location.

We do not believe that clause (d) or (e) of subsection 69(1) of the Act, as read with subsection 80(3), can be taken to have the effect of authorizing a wind up of a pension plan that amounts to a "deferred wind up," as in *GenCorp*, but as failing to authorize a wind up that could not be characterized as such, as in the present case. There is nothing in the language of those statutory provisions that suggests such a distinction. The determining circumstances that justify the





wind up of a pension plan in relation to former employees are essentially post-sale-of-business circumstances; they have nothing to do with the hypothetical benefits that a terminated employee might have had in the absence of continuing employment with a successor employer. Moreover, any inequity that might result from a wind up order — as between those employees who were out of work on the sale of a business and those employees who had the opportunity for continuing employment with a successor — does not have any bearing, under the relevant statutory provisions, on the question of whether the Superintendent is authorized to make such an order. Of course, the Superintendent does not have to make a wind up order whenever the circumstances set out in clause (d), (e), or any other clause of subsection 69(1) are present since the authority in that subsection is discretionary. The Superintendent can properly weigh the equities in the balance in the exercise of that discretion.

Second, IOL argued that the present case is distinguishable from *GenCorp* because the entity that was the immediate successor employer, namely GE Capital, did not cause the Transferred Employees to lose their jobs. Rather that was the result of the action of another entity, GE Capital Canada Retailer Financial Services Company ("GE Retailer"), an affiliate of GE Capital that acquired the business carried on by GE Capital at the Toronto Business Centre around the end of 1997 and assumed the position of employer of the Transferred Employees, and of the other employees at the Centre, at that time.

After taking on the Transferred Employees, GE Retailer became their "employer" (along with IOL and GE Capital) in the sense of the Act and therefore, for the purposes of clause (e) of subsection 69(1). It seems clear to us that the

deemed continuation-of-employment provision in subsection 80(3) of the Act is capable of applying more than once to a transferred employee so that his or her employment is continued through sequential sales of the business in which the employee is engaged. In any event, we think that clause (e) of subsection 69(1), as read with subsection 80(3), should be taken to trigger the right of the Superintendent to order the wind up, in whole or in part, of an employer's pension plan when a successor corporate organization or group, to which employees are transferred, terminates those employees by discontinuing the acquired business as it is carried on at a particular location. We do not think that it should make any difference if a corporate reorganization happens to have occurred, before the business is discontinued, with a resulting change in the entity within the organization or group that is the actual employer of the transferred employee. Such an event ought not to affect the potential statutory benefits that the transferred employees might have as a result of their membership in the pension plan of the predecessor employer.

IOL's third argument for distinguishing the present case from *GenCorp* is that the business that was sold in *GenCorp* was carried on at the same location both before and after the sale whereas the location of the business changed with the sale in the present case. However, the location of the business did not assume any particular importance in *GenCorp*. That is not surprising as business location is not a factor in the deemed continuation-of-employment provision of the Act (now in subsection 80(3)) and discontinuance of business at a specific location was not the trigger for the wind up in that case since the PCO ordered it to proceed on the basis of clause (d), rather than clause (e), of subsection 69(1) of the Act. Nonetheless, the approach in *GenCorp*



lends itself to application in the present case. If a successor employer's termination of transferred employees as a result of a discontinuance of an acquired business constitutes deemed termination by the predecessor employer, as in *GenCorp*, so too should a successor employer's discontinuance of an acquired business, as carried at a particular location, constitute a deemed discontinuance by the predecessor employer if it results in loss of employment by the transferred employees, as in the present case (the PCO said as much in obiter comments in *GenCorp*, (1994), PCO Bulletin 5/3 (Fall 1994), at p. 62). It should make no difference that the predecessor employer never carried on business at that location just as it made no difference in *GenCorp* that the predecessor employer had no hand in the discontinuance of business. There is a similar relationship between the action of the successor employer and the predecessor employer in the two situations — that is the employees originally employed by the predecessor employer lost their jobs as a result of the action of the successor employer. While clause (e) of subsection 69(1) of the Act does not refer explicitly to cessation of employment (although clause (d) does), this must be the necessary result of the discontinuance of business at a specific location before the Superintendent can order a wind up under clause (e). If there is a discontinuance of business without any loss of employment, say where all the employees are transferred to a new location, it seems self-evident that the Superintendent would not be authorized to order a wind up of the pension plan in relation to those employees.

The fourth argument that IOL made for distinguishing the present case from *GenCorp* is that the roles of the Transferred Employees changed in the present case upon the sale of the business. In particular, some of them performed

functions thereafter in relation to the Petro-Canada, as well as the IOL, credit card program and other employees were integrated into the credit card operations with the Transferred Employees. But we do not know whether there were comparable changes in the roles of the transferred employees in *GenCorp* following the sale of the business as the reasons for decision, at the various levels in that case, are silent on this point. In fact, the only important business-related consideration under clause (d) or (e) of subsection 69(1) of the Act, as read with subsection 80(3), would seem to be whether the business that was discontinued, or closed at a specific location, by a successor employer was a business in which the transferred employees were working.

Finally, IOL submitted that all or a significant portion of the business carried on by GE Capital (or GE Retailer) at a specific location was not discontinued with the closure of the Toronto Business Centre because GE Capital had another Alden Road facility across the parking lot that provided card embossing and billing services for the credit card business carried on at the Toronto Business Centre as well as for other credit card businesses of GE Capital. We are not persuaded, on the basis of the evidence we have heard, that there was sufficient physical and operational integration of the two Alden Road facilities that they should be treated as part of a single specific business location for the purposes of clause (e) of subsection 69(1) of the Act nor was there any clear evidence that the credit card embossing facility continued in operation after the closure of the Toronto Business Centre. Therefore, we are not persuaded that the closure of that Centre involved something short of the discontinuance of business at a specific location.



## Conclusion

We conclude, therefore, that the Superintendent is authorized to order the partial wind up of the IOL Plan as proposed in the First Notice of Proposal. The Superintendent's exercise, in the circumstances of the present case, of the discretion involved in carrying out that authority was not challenged before us. IOL simply took the position that the Superintendent did not have the authority to make the proposed order, a position that we have rejected for the reasons set out above. Therefore, we order the Superintendent to carry out the proposal contained in the First Notice of Proposal, subject to the qualification that the order of the Superintendent requiring the partial wind up of the IOL Plan should exclude from the partial wind up group the three Transferred Employees who were re-employed by IOL upon the cessation of their employment with GE Capital (or GE Retailer).

### **2. Are the former members of the IOL Plan who ceased employment with GE Capital between March, 2000 and July, 2000 entitled to credit in that Plan for any increase in age during their period of employment with GE Capital for the purpose of determining entitlement to benefits under the IOL Plan pursuant to clause (c) of subsection 80(1) of the Act?**

In the Second Notice of Proposal, the Superintendent proposes to make an order that the administrator of the IOL Plan give credit for both age and years of service, as at the closure of GE Capital's Toronto Business Centre, to those members who ceased employment with GE Capital between March, 2000 and July, 2000, as a result of that closure, when determin-

ing entitlement to benefits under the IOL Plan. IOL concedes that where clause (c) of subsection 80(1) of the Act applies, it generally requires a pension plan to take account of a member's service with a successor employer and, consequently, any increase in age during that service. However, IOL disputes that this or any other provision of the Act would enable a member of the IOL Plan to "grow into" the particular age requirements under section 4.3 of that Plan or otherwise satisfy the conditions for the operation of that section.

Section 4.3 of the IOL Plan provides for an enhanced early retirement pension in the circumstances that it prescribes, as follows:

#### 4.3 Pension in Lieu of Termination Annuity

A Member with 10 years or more of Service whose employment is terminated by the Company and who is eligible for a termination annuity ... and who will be eligible to retire ... within five years of terminating employment [i.e. who is terminated when between the ages of 50 and 55] may retire ... and receive a pension ... in lieu of a termination annuity ... if the Member's employment is terminated for reasons deemed by the Company to be for maintaining or improving the efficiency of its operations; provided, however, that the date of retirement for the purpose of receiving payment of such pension shall not be effective until the last day of the month in which the Member attains age 55 ...

For ease of reference, we set out, once again, some of the provisions of section 80 of the Act, a section which also figured into the determination of the first issue in this case:

80. (1) Where an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of the employer's busi-





ness or all or part of the assets of the employer's business, a member of the pension plan who, in conjunction with the sale, assignment or disposition becomes an employee of the successor employer and becomes a member of the pension plan of the successor employer,

...

(c) is entitled to credit in the employer's pension plan for the period of employment with the successor employer for the purpose of determining entitlement to benefits under the employer's pension plan.

...

(3) Where a transaction described in subsection (1) takes place, the employment of the employee shall be deemed, for the purposes of this Act, not to be terminated by reason of the transaction.

The Superintendent relied on clause (c) of subsection 80(1) as requiring, for the purposes of section 4.3 of the IOL Plan, that IOL give credit for any age progression of the Transferred Employees while they were employed by GE Capital (or GE Retailer), and subsection 80(3) as deeming the circumstances of the termination of those Employees to be circumstances of their termination, at the same time, by IOL, their original employer.

However, the deemed continuation-of-employment provision of subsection 80(3) operates "for the purposes of [the] Act" and not for the purposes of a pension plan subject to the Act. By contrast, the predecessor provision, in what was then subsection 29(2) of the Act, deemed employment to continue "for the purposes of the employer's plan". The change in wording should be taken to be purposeful and to have some practical effect. The Superintendent argued that the change in wording can be

explained by the fact that it coincided with the introduction into the Act of a requirement that the administrator of a pension plan must ensure, under subsection 19(1), that a pension plan is administered in accordance with the Act and of authority on the part of the Superintendent, under subsection 87(2), to make an order against the administrator requiring it to take action or refrain from taking action in respect of a pension plan if of the opinion that the plan is not being administered "in accordance with [the] Act, the regulations or the plan" (emphasis added). The Superintendent suggested that "for the purposes of the Act", therefore, now embraces "for the purposes of the pension plan" since the Act requires, in effect, that every plan be administered in accordance with the plan. Consequently, it was possible, in the Superintendent's view, to move to the new statement of purposes in subsection 80(3) without losing the effect of the original statement of purposes in the predecessor subsection 29(2).

We do not think that the use of a particular principle set out in the Act (as in subsection 80(3)), in order to interpret a provision of a pension plan (such as section 4.3 of the IOL Plan), can be said to be "for the purposes of the Act". It might be so if the Act stated expressly that the principle applied for the purposes of any pension plan, so that use of the principle to interpret the plan was, arguably, a purpose of the Act. But that is not the situation in the present case. We do not think that subsection 87(2) of the Act provides such an express statement for all it says is that the Superintendent has the authority to take enforcement action if there is a breach by the plan administrator of a provision of a pension plan. That does not make the interpretation of any such provision a purpose of the Act. What the Superintendent can



enforce is the plan, properly interpreted. Subsection 87(2) does not purport to dictate how the plan should be interpreted by superimposing principles of the Act that do not apply, of their own force, to the plan.

The interpretation of section 4.3 of the IOL Plan, as it applies in the circumstances of this case, is not governed by the *GenCorp* decision nor by the same principles that led us to apply *GenCorp* in resolving the first issue in the present case. *GenCorp* and its application in this case concern the effect of subsection 80(3) of the Act upon the operation of subsection 69(1) of the Act. The latter subsection refers, in clauses (d) and (e), to the action of an "employer", in the form of a business discontinuance or reorganization, as triggering the right of the Superintendent to order the wind up of a pension plan. The term "employer" is defined in the Act, as noted in *GenCorp*, to include both the original employer and a successor employer, so that it would cover IOL and GE Capital (or GE Retailer) in the present case. By comparison, section 4.3 of the IOL Plan refers to the action of the "Company" and the rationale of the "Company" for that action. In particular, the section takes effect where there is a termination of employment by the Company and such termination is for reasons deemed by the Company to be for maintaining or improving the efficiency of its operations. The term "Company" is defined, for the purposes of the IOL Plan, as meaning IOL and any affiliate designated by IOL for participation in the IOL Plan; the definition does not include a successor employer. Therefore, the termination of employment that is addressed by section 4.3 of the IOL Plan must mean, in the case of the Transferred Employees, their termination by IOL upon the sale of IOL's credit card business to GE Capital, not their subsequent termination

by GE Capital (or GE Retailer). Consequently, their entitlement to receive the benefit provided by section 4.3 must depend on their age at the time of that termination, assuming it to have been "for efficiency reasons". If they were age 50 to 55 at that time, they would qualify for the benefit.

We are then left with the question of whether the latter conclusion is altered by clause (c) of subsection 80(1) of the Act, which says that employees in the position of the Transferred Employees are entitled to credit in their employer's pension plan for the period of their employment with the successor employer for the purpose of determining entitlement to benefits under the employer's plan. Clearly, this provision does not attribute the actions of a successor employer, in relation to any transferred employees, to the original employer. It cannot, therefore, overcome the requirement of section 4.3 of the IOL Plan that there must have been a termination "by the Company" [i.e. IOL] for efficiency purposes before one gets to the question of whether an employee falls within the qualifying age range for a section 4.3 benefit. The only such termination that may have occurred, on the facts we have before us, was in 1995 when the Transferred Employees moved to GE Capital.

## Conclusion

We conclude, therefore, that none of the Transferred Employees could become entitled to the benefit under section 4.3 of the IOL Plan by virtue of the achievement of the age qualification for that benefit while in the employment of GE Capital (or GE Retailer). Accordingly, we order the Superintendent to refrain from carrying out the proposal contained in the Second Notice of Proposal as it relates to determining entitlement to the benefit under section 4.3 of the IOL Plan.



DATED at Toronto, Ontario, this 21st day of October, 2002.

Colin H.H. McNairn,  
Vice Chair of the Tribunal and Chair of the Panel  
William Forbes,  
Member of the Tribunal and of the Panel

### **REASONS FOR DECISION OF MS. GAVIN**

For the purposes of these Reasons, I adopt the Statement of Facts set out in the separate Reasons for Decision of the other members of the panel that heard this case. The defined terms in those Reasons for Decision are used in the same sense in these Reasons.

The panel was asked to consider two principal issues. The first issue is whether the Superintendent was entitled in the circumstances of this case to make an order, under clause (e) of subsection 69(1) of the Act, requiring a partial wind up of the IOL Plan. On this issue, I agree with my colleagues that a partial plan wind up was appropriate in the circumstances and I concur in the order that they make as a result of their conclusion on this issue.

The second issue is whether the former members of the IOL Plan who ceased employment with GE Capital between March 2, 2000 and July, 2000 are entitled to credit in that Plan for any increase in age during their period of employment with GE Capital for the purpose of determining entitlement to benefits under the IOL Plan pursuant to clause (c) of subsection 80(1) of the Act. On this issue, I disagree with the reasoning of my colleagues.

IOL and the Superintendent agree that in November of 1995, as a result of IOL selling its "Esso" branded consumer and small commercial credit card receivables to GE Capital, the Transferred Employees became entitled to the

benefit of section 80 of the Act. They became, in effect, a distinct group within the IOL Plan. They continued their membership in that Plan and their subsequent service with GE Capital (and GE Retailer) would be used to determine entitlement to benefits under the Plan, in accordance with subsection 80(1) of the Act, and their subsequent termination by GE Retailer would be deemed to be termination by IOL, principally as a result of the operation of subsection 80(3) of the Act.

My colleagues conclude that subsection 80(3) cannot influence the resolution of the second issue because it operates "for the purposes of [the] Act" and not for the purposes of a pension plan subject to the Act. They rely on the fact that the Act was amended to substitute the former phrase for the phrase "for the purposes of the employer's plan", which appeared in a predecessor provision to subsection 80(3) of the Act. As a result, they believe that the Transferred Employees have not had their employment continued for the purposes of determining entitlement to the benefit of any of the provisions of the IOL Plan. I disagree.

The Superintendent's position is that the Act must be read in its entirety, in which case this amendment does not represent a significant change since it was accompanied by further amendments requiring, in subsection 19(1), that a pension plan be administered in accordance with the Act and conferring authority on the Superintendent, under subsection 87(2), to order the administrator of a plan to take or refrain from taking any action when he or she believes that the plan is not being administered in accordance with the Act, the regulations or *the pension plan*. I believe this to be the correct approach.

However, in order to determine if an employee or former employee is entitled to the benefit of





a particular section of a pension plan, one must look at the plan for the determination of eligibility. Under section 4.3 of the IOL Plan, a member must have 10 or more years of service, have their employment terminated by the Company for reasons deemed by the Company to be for maintaining or improving the efficiency of its operations, be eligible for a termination annuity, and be eligible to retire within five years of terminating employment.

For the purposes of the IOL Plan, the term "Company" is defined as being IOL. Therefore, a member of the Plan must have their employment terminated by IOL to be eligible for a benefit under section 4.3 of the Plan since that provision relates to situations where there is a termination by the "Company". Therefore, I agree with my colleagues that section 4.3 of the IOL Plan does not entitle the Transferred Employees to its benefit upon their termination by GE Retailer.

Since the order that my colleagues make in respect of the second issue is limited to entitlement to the benefit under section 4.3 of the IOL Plan, I agree with that order even though I do not agree with all of the reasoning that led to it.

DATED at Toronto, Ontario, this 21st day of October, 2002.

Heather Gavin,  
Member of the Tribunal and of the Panel










PLACE  
STAMP  
HERE

The Editor, *Pension Bulletin*  
Financial Services Commission of Ontario  
5160 Yonge Street, 17th Floor  
Box 85  
North York, ON  
M2N 6L9



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# PENSION BULLETIN

CAZON  
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MAY 2003 • VOLUME 12, ISSUE 2

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## GENERAL ANNOUNCEMENTS

### Pension Division Staff Changes

Gino Marandola has been appointed to the position of Senior Manager, Operations, of the Pension Plans Branch for a one-year assignment.

Dina Taub, Rita Vassalo, Christa Matz, Diana Tom and Doug Malone have been added to the Pension Plans Branch staffing compliment on a contract basis to assist with the workload of the Operations Unit.

Peter Dunlop has been seconded to the Pension Policy Unit as a Senior Policy Analyst, effective January 2, 2003. John King Shan assumes Peter's role as Pension Officer for the duration of his assignment. Fatima Vieira has been seconded to FSCO's Legal Services Branch to work on automobile insurance issues.

### Contacts for Plan Specific Enquiries

Contact Name	Title	Phone Number	Allocation Alpha Range
Jaan Pringi	Sr. Pension Officer	(416) 226-7826	
Gulnar Chandani	Pension Officer	(416) 226-7770	#s-Associated
Penny McIlraith	Pension Officer	(416) 226-7822	Associates-Bulk
Stanley Chan	Pension Officer	(416) 226-7829	Bull-Cem
Larry Martello	Pension Officer	(416) 226-7821	Cen-Cz
Kathy Carmosino	Pension Officer	(416) 226-7823	I-King
Preethi Anthonypillai	Pension Officer	(416) 226-7812	Kinh-Mark
Gino Marandola	Sr. Pension Officer	(416) 226-7820	
Calvin Andrews	Pension Officer	(416) 226-7768	Gko-H
Mark Lucyk	Pension Officer	(416) 226-7833	D-Em
John Graham	Pension Officer	(416) 226-7774	Marl-Nes
Julina Lam	Pension Officer	(416) 226-7815	Net-Pep
Anna Vani	Pension Officer	(416) 226-7833	Peq-Rob
Rosemin Jiwa Jutha	Sr. Pension Officer	(416) 226-7816	
Chantal Laurin	(Bilingual) Pension Officer	(416) 226-7808	En-Gkn
John Khing Shan	(Bilingual) Pension Officer	(416) 590-7237	Roc-Sons
Hae-Jin Kim	Pension Officer	(416) 226-7876	Sont-The Drop
David Allan	Pension Officer	(416) 226-7803	The Droq-Unicorp
Robin Gray	Pension Officer	(416) 226-7855	Unicorp-Z

SEP 18 2003



## FSCO Pension Advisory Committees — Membership as at April 2003

### *Accounting and Assurance Advisory Committee*

Besler, Jason	Cassidy, Jim
Eigl, Charlie <b>(Chair)</b>	Finn, Mary Ann
French, Mike	Koehli, Ron
Racanelli, Nick	Turner, Eric
Wade, Jack	Walker, Albert <b>(Vice-Chair)</b>

### *Actuarial Advisory Committee*

Cohen, Lorne <b>(Vice-Chair)</b>	DiRisio, Wendy
Figueiredo, Karen <b>(Chair)</b>	Hart, David
Hutchinson, Laurie	Levy, Thomas
Morrison, Dan	Peng, Peter
Pitcher, Clare	Robertson, Marcus
Rosenblat, Rob	

### *Investment Advisory Committee*

Andrews, Doug	Franks, Jim
Grantier, Bruce	Kyle, Claire
Mercier, Eileen	Mills, Daniel
Pennal, Peter	Phelps, Tom <b>(Vice-Chair)</b>
Pond, Robin	Schaefer, Klaus
Wirth, Alf <b>(Chair)</b>	

### *Legal Advisory Committee*

Forge, Jeremy	Gold, Murray <b>(Vice-Chair)</b>
Healy, Priscilla	Lokan, Andrew
Nachshen, Gary <b>(Chair)</b>	O'Reilly, Hugh
Picard, Mary	Rienzo, Doug
Rowe, Kevin	Whiston, Bethune





## HEARINGS/COURT MATTERS

The information set out in the following publication is current to March 28, 2003.

### Enforcement Matters

#### i. Club 300 Bowl (BC)

Charges were laid against the corporation and both directors and officers for failing to pay funds deducted from employees' pay into the pension plan, failing to pay the required employer's contributions into the pension plan, failing to file Annual Information Returns and Financial Statements for fiscal years 1995 to 1998 and failing to file a wind up report. The first appearance for the charges occurred on July 24, 2002. A judicial pre-trial was scheduled for February 26, 2003. At that time the judicial pre-trial was adjourned to April 3, 2003.

#### ii. Christopher Bain

Microcolor Dispersions Inc. ("Microcolor") failed to remit both employer and employee contributions to its pension plan in breach of the *Pension Benefits Act*. Both the Company and its then part owner/director Christopher Bain, were charged under the *Pension Benefits Act*. Bain was charged in his personal capacity with being a director who had acquiesced or permitted Microcolor to breach the Act. Both Bain and the company were convicted. A probation order was made against Bain requiring him to make restitution. He failed to comply with the order and was charged with breach of the probation order. The trial is scheduled for April 25, 2003.

#### iii. Microcolor Dispersion Inc.

Microcolor was charged and convicted of failing to remit both employer and employee contributions into its pension plan, in respect of a certain period, in breach of the *Pension Benefits Act*. The required contributions were not made and the company has been charged again in respect

of a later period. A judicial pre-trial was scheduled for January 13, 2003. On that date a trial was scheduled for September 19, and 23, 2003.

#### iv. John Parker

John Parker is a director of Microcolor. He has been charged in his personal capacity with permitting or acquiescing in Microcolor's failure to remit the employer's and employees' contributions into the pension plan. A judicial pre-trial was scheduled for January 13, 2003. A trial is now scheduled for September 19 and 23, 2003.

#### v. Mimik Industries Inc.

Charges were laid against the employer, Mimik Industries Inc., and against an officer of the employer for failing to remit the required contributions to the pension plan. The charges are based on the employer's failure to pay the entire amount of arrears due under a probation order dated October 9, 1997 — approximately \$31,500 is outstanding. A judicial pre-trial was scheduled for February 5, 2003. On that date the judicial pre-trial was adjourned to April 23, 2003.

#### vi. Exxon Mobil Chemical Canada Ltd.

Charges were laid for failing to file an Annual Information Return for 1999 and failing to pay the Annual Information Return filing fees for 1998 and 1999. The first appearance was on February 25, 2003, at Old City Hall. The trial is scheduled for April 25, 2003.

#### vii. Educator Supplies Ltd.

Charges were laid for failing to file an Annual Information Return for 1999, failing to file the Financial Statement for 1999 and failing to pay the Annual Information Return filing fees for 1997, 1998, 1999 and 2000. The first appearance was on February 25, 2003 at Old City Hall. The trial is scheduled for April 25, 2003.



#### **viii. Matrix Logistics Services Ltd.**

Charges laid for failing to file Financial Statements for 1998, 1999 and 2001, for failing to file the Annual Information Return for 2000 and for failing to pay the Annual Information Return filing fee for 2000. The first appearance was on March 18, 2003, at Old City Hall. At that time the matter was adjourned to April 28, 2003.

#### **ix. Oetiker Ltd.**

Charges laid for failing to file Financial Statements for 1998, 1999 and 2000, for failing to file Annual Information Returns for 1999, 2000 and 2001 and for failing to pay the Annual Information Return filing fees for 1999, 2000 and 2001. The first appearance was on March 18, 2003, at Old City Hall. At that time the matter was adjourned to April 28, 2003.

#### **x. Ontario Pork Producers' Marketing Board**

Charges laid for failing to file Financial Statements for 1999, 2000 and 2001. The first appearance was on March 18, 2003, at Old City Hall. At that time the matter was adjourned to May 5, 2003.

### **Court Matters**

#### **i. Monsanto Canada Inc.**

On April 29 and 30, 2002, the Court of Appeal heard the appeal of the Divisional Court's decision brought by Monsanto Canada Inc., the Association of Canadian Pension Management, and National Trust Company. The issues are whether the Act compels a distribution of surplus on partial wind up and whether the doctrine of legitimate expectation applies. The Divisional Court had unanimously allowed the Superintendent's appeal of the Financial Services Tribunal's majority decision, which

held that the Act does not compel a distribution of surplus on partial wind up and that the doctrine of legitimate expectation applied.

On November 22, 2002, the Court of Appeal unanimously dismissed the appeal, holding that subsection 70(6) of the PBA requires a distribution of surplus on partial wind up and that the doctrine of legitimate expectation does not apply. Monsanto and the Association of Canadian Pension Management have each filed an application for leave to appeal to the Supreme Court of Canada.

#### **ii. Ontario Teachers' Pension Plan (Ms. Anne Stairs)**

On May 24, 2002, the Divisional Court heard an appeal by Anne Stairs against the Financial Services Tribunal's decision that directed the Superintendent not to carry out a proposal to order the Teachers' Pension Plan Board (the "Board") to pay certain survivor benefits to Ms. Stairs, a former spouse of the plan member who died before reaching retirement age. The Tribunal held that a separation agreement awarding Ms. Stairs an interest in the plan member's pension benefits (including death benefits) could not be enforced under the Act, as death benefits were not property and the plan member's spouse at the time of his death was not a party to the separation agreement.

The Divisional Court released its decision on June 18, 2002. The appeal was allowed. The Court found that death benefits were property that could be assigned and that subsection 48(13) clearly gave Ms. Stairs an interest in the death benefits. The standard of review is reasonableness. However, the standard is correctness when the Tribunal interprets family law or the common law.

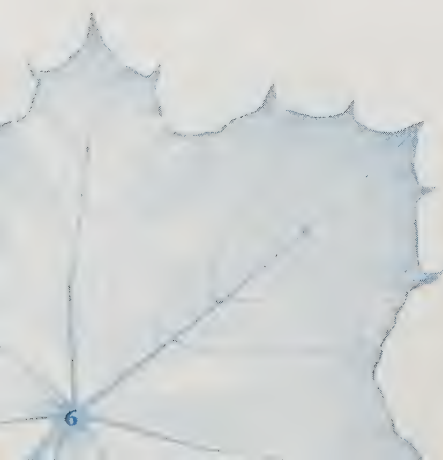
The parties returned to argue the amount of Ms. Stairs entitlement before the Divisional



Court on September 3, 2002. The Court released its decision on December 5, 2002, awarding Ms. Stairs 50% of the pre-1987 pension benefits and 50% of the post 1986 pension benefits up to the date of divorce.

On February 21, 2003, the Court ordered the Board to pay Ms. Stairs costs of \$40,000.00 plus disbursements. The Board has filed a motion for leave to appeal the Divisional Court's decision on quantum to the Court of Appeal. Ms. Stairs has filed a motion for leave to cross appeal with the Court of Appeal.







## LEGISLATIVE CHANGES/REGULATORY POLICIES

Financial Services Commission of Ontario

Commission des services financiers de l'Ontario

<b>SECTION:</b>	Life Income Fund/Locked-In Retirement Account
<b>INDEX NO.:</b>	L050-659
<b>TITLE:</b>	2003 LIF Maximum Payment Amount Table
<b>APPROVED BY:</b>	Deputy Superintendent, Pensions
<b>PUBLISHED:</b>	FSCO web site (December 2002)
<b>EFFECTIVE DATE:</b>	January 1, 2003

*Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.*

The attached table has been prepared by the Financial Services Commission of Ontario ("FSCO"). Additional copies of this table and copies of articles published by FSCO about the Ontario LIF are available on FSCO's web site at: [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca), or may be picked up in person at the reception desk, 4th Floor, 5160 Yonge Street, North York, Ontario.

Percentages shown must be prorated for the initial fiscal year if less than twelve months. Part of a month is treated as a full month.

### Interest assumptions used in the table on page 8:

- (1) 6.00%, which represents the greater of the CANSIM B14013 rate for November 2002 (5.55%) and 6.00% for the first 15 years, and
- (2) 6.00% for the years remaining to the end of the year in which the LIF owner attains 90 years of age. (Assumption to age 90 is for the purpose of maximum payment calculation only. The balance of a LIF must be used to purchase a life annuity by the end of the year in which the LIF owner attains 80 years of age.)



## 2003 Maximum Annual Payment Amount Table for an Ontario Life Income Fund (LIF)

Age at January 1, 2003	New Age During 2003	Years to End of Year Age 90 is Attained	Maximum Payment as a Percentage of the LIF Balance as at January 1, 2003*
48	49	42	6.19655%
49	50	41	6.23197%
50	51	40	6.26996%
51	52	39	6.31073%
52	53	38	6.35454%
53	54	37	6.40164%
54	55	36	6.45234%
55	56	35	6.50697%
56	57	34	6.56589%
57	58	33	6.62952%
58	59	32	6.69833%
59	60	31	6.77285%
60	61	30	6.85367%
61	62	29	6.94147%
62	63	28	7.03703%
63	64	27	7.14124%
64	65	26	7.25513%
65	66	25	7.37988%
66	67	24	7.51689%
67	68	23	7.66778%
68	69	22	7.83449%
69	70	21	8.01930%
70	71	20	8.22496%
71	72	19	8.45480%
72	73	18	8.71288%
73	74	17	9.00423%
74	75	16	9.33511%
75	76	15	9.71347%
76	77	14	10.14952%
77	78	13	10.65661%
78	79	12	11.25255%
79	80	11	11.96160%

\*The maximum annual payment percentage is calculated on the basis of a twelve-month fiscal year to December 31, 2003, using the interest assumptions on the previous page.





Financial Services Commission of Ontario  
Commission des services financiers de l'Ontario

<b>SECTION:</b>	Financial Statements
<b>INDEX NO.:</b>	F100-100
<b>TITLE:</b>	Requirement to File Pension Plan Financial Statements <u>or</u> Pension Fund Financial Statements — Regulation 909 ss. 76(1), 76(2) and 76(8).
<b>APPROVED BY:</b>	Superintendent of Financial Services
<b>PUBLISHED:</b>	FSCO web site (February 28, 2003)
<b>EFFECTIVE DATE:</b>	March 1, 2003
<b>REPLACES:</b>	F100-150, F100-400

*Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.*

Section 76 of the Regulation sets out requirements for pension plan financial statements and pension fund financial statements filed with the regulator. The primary purpose of section 76 is to require disclosure regarding the assets of the plan, how the assets are invested and how these investments are performing.

Subsection 76(1) of the Regulation requires the plan administrator to file financial statements for the pension plan or financial statements for the pension fund as at the plan's fiscal year end. Subsection 76(2) of the Regulation requires financial statements of both types to be audited if the plan has \$3,000,000 or more in assets calculated at market value at the end of the fiscal year. Subsection 76(8) of the Regulation states that all financial statements and auditors' reports (if applicable) shall be prepared in accor-

dance with the principles and standards set out in the Handbook of the Canadian Institute of Chartered Accountants (the CICA Handbook).

Pension plan financial statements are general purpose financial statements that provide information about both the assets and the liabilities of a pension plan. They are, therefore, suitable both for regulatory filing and distribution to plan members. Pension fund financial statements do not disclose benefit obligations, but they are suitable for regulatory filing because information about plan liabilities is available to the regulator in other documents filed with FSCO.

When pension fund financial statements are prepared for regulatory filing, a note to the financial statements should state the basis of accounting. As financial statements filed with FSCO may be inspected by individuals listed in subsection 29(1) of the PBA, the note should explain that the financial statements have been prepared for regulatory purposes only and are not general purpose financial statements. The note should also state that the financial state-



ments do not disclose the pension benefit obligation but, in all other respects, are prepared in accordance with generally accepted accounting principles. Additional information about pension fund financial statements for defined benefit pension plans is set out in the CICA Handbook as Auditing Guideline 12, "Auditor's Report on Pension Fund Financial Statements Filed with a Regulator."



Financial Services Commission of Ontario  
Commission des services financiers de l'Ontario

**SECTION:** Administrator

**INDEX NO.:** A300-805

**TITLE:** Electronic Communications Between Plan Administrators and Plan Beneficiaries

**APPROVED BY:** Superintendent of Financial Services

**PUBLISHED:** FSCO web site (March 2003)

**EFFECTIVE DATE:** March 14, 2003

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*Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA"), Regulation 909, R.R.O. 1990 ("Regulation") or Electronic Commerce Act, 2000, S.O. 2000, c. 17 ("ECA"), the FSCO Act, PBA, Regulation or ECA govern.*

*NOTE: For your convenience, the electronic version of this policy contains hyperlinks to the ECA and CAPSA Guideline #2 as they exist at March 14, 2003. Changes to the linked websites are not the responsibility of FSCO and may result in the failure of these hyperlinks or accessing a version of the document other than that which existed at March 14, 2003.*

In February 2002, the Canadian Association of Pension Supervisory Authorities ("CAPSA") released CAPSA Guideline #2, Electronic Communication in the Pension Industry. CAPSA Guideline #2 is intended to help pension plan administrators, and members, former members and other beneficiaries (the "plan beneficiaries") apply the provisions of the respective electronic commerce legislation for each jurisdiction to communications required under pension benefits legislation. The electronic

commerce legislation for Ontario is the *Electronic Commerce Act, 2000*, which came into force on October 16, 2000.

The Financial Services Commission of Ontario ("FSCO") takes the position that communications between pension plan administrators and plan beneficiaries required under the PBA may be provided electronically, if they comply with all of the relevant requirements under the PBA, ECA and CAPSA Guideline #2. A plan administrator may consider, for example, electronically providing documents such as the annual statement, the explanation of the pension plan provisions and prescribed notices to plan beneficiaries, so long as the documents and their distribution comply with the PBA, ECA and CAPSA Guideline #2. It should be noted that the electronic exchange of information is entirely voluntary on the part of both the administrator and the plan beneficiary. Particular attention should be paid to the consent provisions of the ECA and CAPSA Guideline #2. CAPSA Guideline #2 explains what plan beneficiary consent should entail. Consent, together with other requirements, must also be valid at the time that the communication is made.





CAPSA Guideline #2 does not apply to electronic communications between plan administrators and pension regulators, and it is not yet possible for FSCO to receive or ensure the integrity of documents in electronic formats. Consequently, any documents in respect of the pension plan or the pension fund required to be filed with or provided to FSCO, including any documents the Superintendent of Financial Services is required to make available under section 30 of the PBA, must continue to be provided to FSCO in the traditional hard copy format.

### **Frequently Asked Questions about Electronic Communications Between Plan Administrators and Plan Beneficiaries**

*Must a plan beneficiary receive documents electronically?*

No. Plan beneficiaries will continue to receive documents in paper form unless they consent, or are deemed to consent as provided under CAPSA Guideline #2, to receiving the documents electronically. A plan beneficiary must designate an electronic medium, such as providing an email address, for receiving these documents electronically.

In deciding whether to receive documents electronically, a plan beneficiary should consider how to store and maintain these documents to ensure future access to the information. For example, if the plan member designates his/her office computer for receipt of documents, might access to and storage of these personal documents be restricted by the employer's policy on the use of computer resources or by changes in the employment relationship?

*Must the administrator provide documents electronically?*

No. There is no requirement under the PBA, ECA and CAPSA Guideline #2, to offer any documents electronically. If the administrator chooses to provide documents electronically, the administrator would determine which documents to offer in electronic format to plan beneficiaries.

*Once a plan beneficiary has consented to receive documents electronically, can the beneficiary withdraw the consent?*

Yes. A plan beneficiary may revoke a consent or a deemed consent at any time, by so advising the plan administrator either in writing or electronically.

*Can the administrator rely on the provision of the document electronically as a valid delivery to the plan beneficiary?*

Yes, provided the administrator has complied with requirements of the PBA, the ECA and CAPSA Guideline #2 in the creation and transmission of the electronic document. However, if the administrator has received a message that the electronic document is non-deliverable, or if the administrator is otherwise aware that the plan beneficiary cannot receive the document through the electronic means previously identified, the administrator would know that the recipient cannot retrieve and process the electronic document. Therefore, the requirements of the PBA, the ECA and CAPSA Guideline #2 would not have been fulfilled.



*Must the administrator provide a paper copy of the document, in addition to an electronic copy, once the plan beneficiary has consented to electronic communication?*

No. The administrator need not provide a paper copy of the document, so long as the consent of the plan beneficiary remains valid. However, the electronic communication must be able to be printed and retained by the plan beneficiary.

*Where a plan beneficiary continues to have a right to receive pension documents following termination of employment or retirement, can these documents be requested electronically?*

Yes, assuming the plan administrator offers to provide the documents electronically. To receive the documents electronically, the plan beneficiary must provide consent and designate an electronic medium for the receipt of documents.



Financial Services Commission of Ontario  
Commission des services financiers de l'Ontario

<b>SECTION:</b>	Locked-In Accounts
<b>INDEX NO.:</b>	L200-300
<b>TITLE:</b>	Life Income Funds (LIFs) — Regulation 909 Schedule 1
<b>APPROVED BY:</b>	Superintendent of Financial Services
<b>PUBLISHED:</b>	FSCO web site (March 2003)
<b>EFFECTIVE DATE:</b>	March 1, 2003
<b>REPLACES:</b>	L050-500, L050-501, L050-600, L050-603, L050-650, L050-700, L050-701, L050-702, L050-703

*Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.*

This policy includes the following headings:

- **Introduction — The Ontario Life Income Fund**
- **Sale and Purchase of a LIF**
- **Sources of Funds for LIFs**
- **Requirements for Annual Payments**
- **General Provisions**
- **The Ontario LIF and LIFs Established in Other Jurisdictions**
- **Special Applications for Withdrawal of Money from a LIF: Shortened Life Expectancy, Small Amounts and Amounts the Exceed ITA Limits**
- **Frequently Asked Questions About the LIF**

### **Introduction — The Ontario Life Income Fund**

Clause 42(1)(b) of the PBA provides that a former member of a pension plan who, on or after January 1, 1988, terminates employment or ceases to be a member of the pension plan and who is entitled to a deferred pension, is entitled to require the administrator to pay an amount equal to the commuted value of the deferred pension into a prescribed retirement savings arrangement (referred to in this policy as a "locked-in account"). This policy will provide an overview of the main features of one such locked-in account, the Life Income Fund ("LIF"). Most of the legislative requirements respecting LIFs can be found in Schedule 1 of the Regulation.





Prior to October 1992, where pension money had been transferred to a locked-in RRSP (now known as a locked-in retirement account or "LIRA"), individuals had to purchase a life annuity by the time the locked-in RRSP came to an end when the individual reached age 71 (now age 69) regardless of whether they needed retirement income at that time. Many individuals objected to being required to purchase an annuity, noting the low annuity rates then available, the absence of flexibility in retirement planning, and the loss of continuing investment growth of their retirement funds. The Ontario LIF, a more flexible arrangement for tax and income planning purposes, was introduced in October 1992 as a locked-in account that would provide an income payment vehicle for pension money that is subject to the PBA.

The LIF is intended to provide greater flexibility by enabling individuals to defer the annuity purchase while continuing to provide lifetime retirement income. While money is in the LIF, a certain amount must be paid out to the owner each year to provide a flow of retirement income within a specified range. Control over the balance of the locked-in investments rests with the owner, and all investment earnings continue to accrue on a tax-sheltered basis. Any assets in the LIF at the end of the year in which the owner reaches age 80 must be used to purchase a life annuity.

The Regulation provides that a LIF must qualify as a registered retirement income fund ("RRIF") under the *Income Tax Act* (Canada) ("ITA"). In essence, the LIF is a RRIF with additional requirements. The RRIF rules under the ITA set the minimum amount that must be paid out annually. Consistent with the principle that locked-in money must provide a lifetime retirement income, the Regulation sets the annual maximum payment for a LIF and requires the eventual purchase of a life annuity.

## **Sale and Purchase of a LIF**

### Who Can Sell a LIF?

The LIF may be sold by any financial institution as long as the LIF complies with the requirements of the ITA and the institution administers the amount transferred and all interest and investment gains as required by the PBA and Regulation. Retailers of LIFs can include insurance companies, banks, trust companies, credit unions, investment companies and individuals authorized to sell a RRIF. Ontario does not require financial institutions to submit their LIF contracts for approval, nor does the Financial Services Commission of Ontario ("FSCO") maintain a list of approved LIF contracts, as some Canadian jurisdictions do. FSCO does not register LIFs and will not review specimen LIF contracts for compliance with the applicable requirements.

### Who Can Purchase a LIF?

Subject to the conditions for purchase noted below, a LIF may be purchased by:

- any former member of a pension plan who is entitled to a portability option as a result of termination of employment or plan membership, or as a result of a plan wind up where portability rights are granted;
- a spouse, same-sex partner or former spouse or former same-sex partner of a former member who is entitled to a portability option as a result of the former member's termination of employment or plan membership, or as a result of a plan wind up where portability rights are granted to the former member;
- a spouse, same-sex partner or former spouse or former same-sex partner of a former member who is entitled to a share of the former member's pension benefits under a court order or separation agreement due to a breakdown in their relationship (although the timing of the spouse's or same-sex partner's



access to income payments is dependent on the former member's entitlement date); or

- an individual who owns a LIRA, a locked-in retirement income fund ("LRIF") or another LIF.

It should be noted that Ontario members of pension plans regulated under the federal *Pension Benefits Standards Act, 1985* ("PBSA") who were in "included employment" as defined in the PBSA are generally not eligible to purchase the Ontario LIF.

#### Additional Conditions for a LIF

The earliest age that an individual can purchase a LIF is generally 55, but it could be earlier depending upon the age at which members may retire under the terms of the pension plan from which the money originated. Where money has been transferred from the pension plans of several employers, the earliest retirement date under any of the pension plans would apply. The determination of the earliest date on which the individual can purchase a LIF and begin receiving payments is a question of fact which must be determined by the individual and his or her advisors, based on the provisions of the former pension plan(s) and the individual's personal information. The latest age at which an individual can purchase a LIF is generally 79, although an individual could purchase a LIF during the year in which he or she reaches 80 and then purchase an annuity using the LIF assets at the end of that year.

When transfers are being made from a registered pension plan to a LIF, the financial institution should ensure that the plan administrator identifies the earliest date the plan member may retire, regardless of whether the pension is payable as a reduced pension. Where that information is not provided, the financial institution must satisfy itself that the plan allows for retire-

ment before age 55 and that all conditions for receipt of the pension under that plan were satisfied by the individual before permitting LIF payments to commence prior to age 55.

If the individual who wishes to purchase a LIF has a spouse or same-sex partner on the day the LIF is purchased, the written consent of the spouse or same-sex partner is generally required before the LIF can be purchased. If the individual is living separate and apart from his or her spouse or same-sex partner on the date of the purchase, the consent of the spouse or same-sex partner is not required. If all the money that is to be used to purchase the LIF is derived from the pension benefits of the purchaser's former spouse or same-sex partner as a result of a marriage or relationship breakdown, the consent of the purchaser's current spouse or same-sex partner is also not required.

There is no form approved by the Superintendent of Financial Services ("Superintendent") for use as a spousal or same-sex partner consent. FSCO pension Form 3 (Waiver of Joint and Survivor Pension) is not appropriate and should not be used for consent to purchase a LIF or be modified to so provide. By consenting to the purchase of a LIF, a spouse or same-sex partner is not waiving his or her entitlement to survivor benefits.

The spouse or same-sex partner should be aware that there is no requirement that he or she provide such a consent; to do so is solely at his or her option. However, in those situations in which a consent is required, the LIF cannot be purchased unless the consent is given. Spouses or same-sex partners might want to withhold consent to the purchase of a LIF for any number of reasons. For example, annual payments from a LIF could potentially reduce the amount of any future survivor benefit or the amount to be divided upon the breakdown of the marriage or





relationship. Also, the more that is taken out of a LIF each year, the less that will be left in the LIF when an annuity is purchased, which could be detrimental to the spouse or same-sex partner. Because the LIF may be invested in the markets at the direction of the LIF owner and is not guaranteed, investment losses may occur and reduce the balance in the LIF.

## Sources of Funds for LIFs

### Primary Sources

A LIF can be purchased with money transferred from a registered pension plan or from a locked-in account (LIRA, LRIF or another LIF).

### Commuted Annuities

#### (1) Annuities purchased prior to October 1992

If an individual is currently receiving payments from a life annuity that was purchased before Ontario LIFs were introduced (October 1992), the annuity may be commuted to purchase a LIF (or an LRIF) only if the issuer of the annuity contract agrees to do so. This may be done for a single or joint life annuity with or without a guarantee period. In the case of a joint life annuity, a spouse or same-sex partner who is in receipt of a lifetime survivor benefit may also commute the annuity to purchase a LIF if the former member satisfied the age requirement for a LIF purchase.

Issuers of annuities who agree to transfer funds to a LIF are obligated to identify the commuted value of the annuity, and the amount that will be available for the LIF purchase. The difference between the two amounts, if any, is the charge applied to effect the transfer.

#### (2) Annuities purchased after October 1992

Since Ontario LIFs were introduced in October 1992, clause 22(1)(c) of the Regulation has provided that the unexpired period of a guaranteed annuity purchased after that time may be com-

muted for the purpose of purchasing a LIF (or now an LRIF). The insurer cannot withhold agreement and must identify the commuted value of the annuity and the amount that will be available for the LIF (or LRIF) purchase. The difference between the two amounts, if any, is the charge applied to effect the transfer.

## Requirements for Annual Payments

A certain amount must be paid out of a LIF each fiscal year, except in the initial year of the LIF. The LIF owner may choose not to withdraw any money in the first year but must begin receiving payments from the LIF before the end of the second year. The fiscal year of a LIF must end on December 31 and may not exceed twelve months. When a LIF is purchased at any time other than January 1, the first fiscal year begins at the time of the purchase and the annual payment for the first year, if any, must be prorated over the shortened year.

The LIF owner must notify the financial institution at the beginning of each fiscal year of how much he or she wishes to be paid and when payments are to be made (e.g., at the beginning or end of the fiscal year or on another basis that is allowed under the ITA). If the owner does not notify the financial institution of the amount to be paid, the minimum amount required under the ITA must be paid out to the LIF owner.

### Minimum Payment Formula

The minimum amount that must be paid from the LIF each year is based on the minimum that must be paid from a RRIF, as prescribed under section 7308 of the federal Income Tax Regulations. Generally, the minimum is calculated by dividing the balance in the LIF at the beginning of the fiscal year by (90 minus the owner's age as of the beginning of the calendar year). If the LIF owner has a spouse or same-sex partner, that person's age may be used to





calculate the minimum in accordance with the ITA rules.

### Maximum Payment Formula

To ensure that there is sufficient money in the LIF to purchase a life annuity by age 80, regular payments from the LIF are subject to a maximum annual limit determined using an actuarial formula. The maximum is calculated by dividing the balance in the LIF at the beginning of the fiscal year by the present value (at the beginning of the fiscal year) of an annuity of \$1, payable annually in advance over the period from the beginning of the fiscal year until the end of the year in which the owner reaches ninety years of age. The owner cannot use his or her spouse's or same-sex partner's age in this calculation.

The Regulation also prescribes interest rate assumptions that apply for the purposes of this formula. For fiscal years which begin on or after January 1, 2001, the interest rate to be used in the formula for the first 15 years is the **greater of 6% or** the prescribed rate published for the previous November in the *Bank of Canada Review* under identification number CANSIM B-14013. For the sixteenth and each subsequent fiscal year, the interest rate is 6%.

These prescribed interest rates (CANSIM B-14013 and 6%) are **not** the maximum percentages that may be paid out of the LIF each year, but are simply the rates used in the formula to determine the maximum payment.

If the maximum amount for a fiscal year is less than the minimum amount prescribed under the ITA, the minimum amount must be paid out of the fund during the fiscal year.

Each year in December, FSCO publishes a policy which includes a table that sets out the maximum percentage that can be paid from a LIF in the upcoming fiscal year. Financial institutions

can also determine this percentage themselves as soon as the November CANSIM B-14013 rate is published.

Note that the maximum annual limit on regular payments from the LIF does not apply to the special applications to withdraw money from a LIF described below. The maximum limit for a year does not change if money is withdrawn under one of these special applications.

### Initial Year Maximum Payment

Where the money in a LIF was transferred from a registered pension plan, annuity or a LIRA (not from another LIF or LRIF), in the initial fiscal year of the LIF the maximum is calculated based on the amount transferred into the LIF and is prorated over the number of months remaining in the fiscal year of the LIF. The CANSIM rate for the previous November must be used in calculating the maximum amount payable in the initial fiscal year.

Note: Prior to March 3, 2000, Schedule 1 required that in the initial year of the LIF, where the transfer of money from a registered pension plan, annuity or LIRA occurred after January 1, the prescribed CANSIM rate for the month preceding the month in which the money was transferred would be used to determine the maximum payment amount for the initial year. For example, if the initial transfer was received during the month of May, the April CANSIM rate would be used to calculate the annual maximum payment amount for the initial eight-month fiscal year. However, Schedule 1 was revised in March 2000, and this requirement is no longer applicable.

Where the assets in a LIF have been transferred from another LIF or an LRIF, the maximum amount that can be paid from the new LIF in the new LIF's first fiscal year is zero.



## General Provisions

### No Commutation or Surrender

Money in a LIF cannot be commuted, withdrawn or surrendered in whole or in part except as permitted under the PBA or Regulation. This prohibition does not apply to prevent annual payments from a LIF or the following exceptions by which money in a LIF can be withdrawn by special application:

- small amounts (Schedule 1, s. 9);
- shortened life expectancy (Schedule 1, s. 10);
- excess contributions over the ITA limit (Regulation s. 22.2); and
- financial hardship (Regulation Part III).

### Purchase of Annuity Required

If there are any assets remaining in the LIF on December 31 of the year in which the owner reaches age 80, those assets must be used to purchase an immediate life annuity for the owner. If the owner does not purchase such annuity by March 31 of the year after he or she reaches age 80, the financial institution is required to purchase it for the owner. If the owner has a spouse or same-sex partner and is not living separate and apart from the spouse or same-sex partner when the annuity is purchased, the annuity must provide a joint and survivor annuity where at least 60% of the annuity payment continues to the surviving spouse or same-sex partner. The owner and spouse or same-sex partner may waive the joint and survivor aspect of the annuity. As set out in section 22 of the Regulation, the annuity must be determined on a basis that does not take into account the sex of the annuitant. Should the annuity include pre-1988 benefits that were determined using sex-distinct rates, this portion of the annuity may be determined based on sex-distinct annuity rates.

### Transfer Options

Before December 31 of the year in which the LIF owner reaches age 80, all or part of the assets in the LIF may be transferred to another LIF, an LRIF, a LIRA (if the owner has not turned 69) or to purchase an immediate life annuity, if allowed under the ITA.

### Survivor Entitlements

If the LIF owner dies before a life annuity has been purchased, the owner's spouse or same-sex partner, or if there is none, a named beneficiary, or if there is none, the owner's estate, is entitled to receive a benefit equal to the balance in the LIF as of the date of death. The death benefit is not locked-in.

A spouse or same-sex partner living separate and apart from the LIF owner on the date of the owner's death is not entitled to a death benefit under the legislation, although the owner may designate that person as a beneficiary.

In the legislative changes introduced in March 2000, the spousal waiver right was deleted for the LIF. The spouse or same-sex partner of the LIF owner is no longer able to waive his or her right to survivor benefits.

### Information that Must be Provided by the Financial Institution

Schedule 1 provides that a LIF contract must contain specific information, including: the name and address of the financial institution; the owner's powers, if any, respecting investment of the LIF assets; a statement that the owner agrees not to assign, charge, anticipate or give as security money payable under the LIF (except if required by a court order or domestic contract under the *Family Law Act*); and a description of the method for determining the value of the assets in the LIF.



In addition, at the beginning of each fiscal year, the following information must be provided to the owner: the sums deposited into the LIF; accumulated investment earnings (including any unrealized capital gains and losses); payments made out of the LIF; fees charged against it during the previous fiscal year; the value of the assets in the fund as of the beginning of the fiscal year; and the minimum and maximum amounts that may be paid out for the year. This information must also be provided to the owner when money is transferred from the LIF to a LIRA, LRIF, or another LIF, or to purchase an annuity, determined as of the date of the transfer. In addition, upon the death of the owner, this information must be provided to the beneficiary determined as of the date of the owner's death.

### **The Ontario LIF and LIFs Established in Other Jurisdictions**

Money in an Ontario LIF may be transferred to a financial institution in another jurisdiction within Canada, as long as the transferee institution administers the LIF in accordance with Ontario's pension legislation. For example, a former plan member terminates employment in Ontario and purchases an Ontario LIF from a bank. Subsequently, he moves to British Columbia and wishes to use some or all of the money in the Ontario LIF to purchase a LIF in B.C. The bank in Ontario is not permitted to transfer the money unless the financial institution in B.C. administers the new LIF in accordance with Ontario law as an Ontario LIF. This is consistent with the treatment of LIRAs and LRIFs.

Since a LIF must qualify as a RRIF under the ITA, LIF funds cannot be transferred outside of Canada. In addition, Ontario would not be able to enforce legislated requirements restricting

the use of locked-in money in LIFs if the funds were transferred outside of Canada.

### **Special Applications for Withdrawal of Money from a LIF: Shortened Life Expectancy, Small Amounts and Amounts that Exceed ITA Limits**

#### **General Provisions that Apply to all Special Applications**

All special applications for withdrawals of money from a LIF due to shortened life expectancy, small amounts and amounts that exceed ITA limits must be made on a form approved by the Superintendent (Form 5) and signed by the LIF owner. If the owner has a spouse or same-sex partner on the date the application is signed, the spouse or same-sex partner must consent to the application subject to certain exceptions (see next paragraph) before the money can be withdrawn. The spouse or same-sex partner is not obligated to consent to the application, but if the spouse or same-sex partner agrees to consent, he or she must complete Part 4 of Form 5 in the presence of a witness (someone other than the LIF owner).

The consent of a spouse or same-sex partner is not required if the LIF owner and spouse or same-sex partner are living separate and apart at the time the application is signed. Consent of a spouse or same-sex partner is not required if the money in the LIF resulted from the pension benefit of the owner's former spouse or same-sex partner as a result of a breakdown in their relationship.

The completed application must be submitted to the financial institution which administers the LIF within 60 days after the date on which it was signed by the owner and, if applicable, the spouse or same-sex partner. Whether the application meets the requirements for withdrawal is determined by the financial institu-





tion. If the applicant qualifies for the withdrawal, the financial institution must pay the money within 30 days after it receives the completed application.

### **Applications for Withdrawal of Money from a LIF for Shortened Life Expectancy**

In addition to the aforementioned general provisions for special applications, the following provisions apply to "Shortened Life Expectancy" applications.

#### Applications under the Terms of the Former Pension Plan

Before March 3, 2000, LIF owners whose life expectancy was shortened considerably by reason of mental or physical disability were not allowed to avail themselves of the shortened life expectancy provisions of the PBA. The legislative changes which came into effect on March 3, 2000 provided relief to LIF owners whose life expectancy is shortened. If the pension plan from which the money in the LIF originated contains a provision allowing for the variation of payment due to shortened life expectancy, the LIF owner can seek to withdraw money from the LIF under those terms. The LIF owner is responsible for satisfying the financial institution administering the LIF that his or her former plan contained such a provision and that, based on medical evidence and the terms of the pension plan, the owner's life expectancy has been considerably shortened. This is a question of fact. It is up to the financial institution to determine the format by which the application should be made.

Form 5 should not be used where the owner is applying under the terms of the plan.

#### Applications under Section 10 of Schedule 1

Effective March 3, 2000, Schedule 1 was amended to provide for shortened life expectancy withdrawals for all LIF owners, regardless of whether or not their former pension plan contained a shortened life expectancy provision. Any LIF owner may now apply to the financial institution to withdraw some or all of the money in the account if he or she is suffering from an illness or physical disability that is likely to shorten his or her life expectancy to less than two years.

The application must be made on Form 5 and be accompanied by a spousal or same-sex partner consent, if applicable, and a statement signed by a physician who is licensed to practice medicine in Canada that, in his or her opinion, the owner has an illness or physical disability that is likely to shorten his or her life expectancy to less than two years. The physician may either fill in Part 5 of Form 5, or provide his or her opinion as to the owner's life expectancy in another written and signed format, such as a letter. If the physician does not fill in Part 5, the letter must include a statement that the physician is licensed to practice medicine in a jurisdiction in Canada.

If the pension plan from which the money in the LIF originated contained a variation of payment provision for shortened life expectancy, the LIF owner has the choice of applying under the terms of section 10, Schedule 1 (and should use Form 5) **or** applying under the terms of the plan provisions (in which case, Form 5 should not be used). An example of a situation where the individual may wish to apply under the plan provisions would be where the plan provided a more generous shortened life expectancy criteria (e.g., a life expectancy of less than five years).



A LIF owner can only apply for a shortened life expectancy withdrawal under the rules described above if his or her LIF is governed by the laws of Ontario. If the LIF is governed by the laws of another province or the federal government, Ontario's shortened life expectancy provisions are not applicable. If the owner is not sure which laws govern their LIF, he or she should contact the administrator of the pension plan from which the LIF originated or the financial institution administering the LIF.

### **Applications for Withdrawal of Money from a LIF of a Specified Amount at Age 55 or Over ("Small Amounts")**

In addition to the aforementioned general provisions for special applications, the following provisions apply to "Small Amounts" applications.

The locking-in rules present a problem when the amount in a LIF is so small that it would not be worthwhile for the owner to purchase a life annuity by age 80.

Effective March 3, 2000, the owner of a LIF may apply to withdraw **all** of the money in the LIF if:

- The owner is at least 55 years old when he or she applies; and
- The value of all assets held in all of the owner's Ontario LIRAs, LIFs and LRIFs is less than 40% of the Year's Maximum Pensionable Earnings ("YMPE") for the calendar year in which the application is made. (For the year 2003, this amount is 40% of \$39,900 [the YMPE for 2003] = \$15,960.)

The value of the assets held in each Ontario LIRA, LIF and LRIF must be based on the most recent statement given to the owner by the financial institution, and the statement must not be dated more than one year before the date the application is signed.

LIF owners can only apply for the small amount withdrawal under the rules described above if their LIF is governed by the laws of Ontario. If the LIF is governed by the laws of another province or the federal government, these rules do not apply. If the owner is not sure which laws govern their LIF, he or she should contact the administrator of the pension plan from which the LIF originated or the financial institution administering the LIF.

### **Applications for Withdrawal of Money from a LIF for Amounts that Exceed ITA Limits**

In addition to the aforementioned general provisions for special applications, the following provisions apply to "Amounts that Exceed the ITA Limits" applications.

The ITA imposes a limit on the amount that a former pension plan member may transfer from a registered pension plan to a locked-in account (LIRA, LIF or LRIF) on a tax-sheltered basis when a former member terminates employment or membership in the plan. Amounts that do not exceed the ITA limit can only be transferred to a locked-in account. If the amount of the commuted value of an individual's deferred pension that is to be transferred from a pension plan to a locked-in account is greater than the amount allowed under the ITA for such a transfer, the administrator of the former member's pension plan must pay the excess amount to the individual in a lump sum.

However, if an amount that exceeds the ITA limit has already been transferred to a LIF, the owner may apply to the financial institution to withdraw the excess amount. It is up to the financial institution that administers the LIF to calculate the aggregate amount to be withdrawn.



The application must be made on Form 5 and must include a written statement from either the administrator of the owner's former pension plan or the Canada Customs and Revenue Agency ("CCRA") that sets out the excess amount that was transferred into the LIF. The consent of a spouse or same-sex partner is not necessary.

LIF owners can only apply for the withdrawal of amounts that exceed the ITA limit under the rules described above if their LIF is governed by the laws of Ontario. If the LIF is governed by the laws of another province or the federal government, these rules do not apply. If the owner is not sure which laws govern their LIF, he or she should contact the administrator of the pension plan from which the LIF originated or the financial institution administering the LIF.

### **Applications for Withdrawal of Money from a LIF for Financial Hardship**

Effective May 1, 2000, individuals who qualify under certain prescribed circumstances of financial hardship may apply to the Superintendent of Financial Services for access to the money in their LIF. The rules and requirements for making such applications will be set out in a future policy.

### **Frequently Asked Questions About the LIF**

*How is the transfer of the commuted value from a pension plan to a LIF provided for under the ITA?*

For the purposes of the ITA, an Ontario LIF is actually a RRIF with some additional conditions. These additional conditions make the LIF an acceptable vehicle to receive locked-in funds under Ontario law. The ITA provides for a transfer from a defined contribution plan (clause 147.3(1)(c)(iii)) and from a defined benefit plan (clause 147.3(4)(d)(iii)) to a RRIF.

*Is specific wording required to allow a transfer to a LIF?*

Yes. For a pension plan document to provide for a transfer that is acceptable to both the federal and provincial regulators, the transfer provision must contain references to both the RRIF and the LIF. For Ontario's purposes, a portability option which permits a transfer to "a RRIF which meets the requirements for a LIF as set out in the Regulation under the *Pension Benefits Act*, as amended from time to time" will be acceptable. Information on wording acceptable under the ITA should be sought from CCRA.

In addition, the RRIF document, a specimen of which is required to be on file with the CCRA, must comply with both the contractual requirements under the ITA for a RRIF and under the Regulation for a LIF.

*How is money in the LIF taxed?*

Under the ITA, all investment earnings on the money in the LIF accrue on a tax-deferred basis. LIF payments and withdrawals are considered to be taxable income for the year in which payment or withdrawal was made. Further inquiries should be directed to the CCRA.

*Are there any restrictions on how a LIF may be structured? Can a LIF be self-directed?*

A LIF can be structured in any manner as long as it satisfies the requirements in the ITA for a RRIF and the requirements in the Regulation for a LIF. This would include a self-directed LIF.

*Are there any investment restrictions that the LIF must comply with?*

The only investment rules that a LIF must comply with are those under the ITA for a RRIF.





*What is meant by "direct" and "indirect" transfers to a LIF?*

Direct transfers refer to those from a registered pension plan, while indirect transfers refer to transfers from another locked-in account (LIRA, LIF or LRIF).

*When a LIF is transferred from one financial institution to another, is the spouse's or same-sex partner's consent required?*

No. Consent is only required when the LIF is first purchased and when certain withdrawals are made.

*When an annuity is commuted for the purchase of a LIF, must the spouse or same-sex partner consent?*

While there is no requirement for a spouse or same-sex partner to consent to the commutation of the annuity for the purpose of purchasing a LIF, the spouse or same-sex partner must consent to the actual purchase of the LIF. Therefore, if the money which is commuted is used for the first purchase of a LIF, the consent of the spouse or same-sex partner is required for the LIF purchase.

*What rights does a spouse or same-sex partner have when a marriage or relationship ends?*

A former spouse or same-sex partner is entitled to make a claim against assets in a LIF as part of the division of marital property in the event of a breakdown in the marriage or relationship. However, that entitlement is effective only when a court order or domestic contract under the *Family Law Act* is provided to the financial institution administering the LIF. In addition, assets transferred to the former spouse or same-sex partner due to the breakdown must continue to be locked-in.

*Where the minimum payment is greater than the maximum payment, which amount should be paid?*

Subsection 6(6) of Schedule 1 provides that the minimum amount must always be paid out of a LIF each year, regardless of what the maximum may be.

*Can a LIF owner withdraw the minimum amount and transfer the difference between the minimum and maximum to a RRIF?*

Yes, but if the owner does so, his or her withdrawal for that year for the purpose of the LIF will be the maximum amount.

*What happens when assets in a LIF are transferred to another LIF before any money is paid out to the owner?*

In this situation, the maximum amount that can be paid from the new LIF is zero. However, the ITA requires that the minimum amount be paid out from the old LIF before the transfer is made.

*Is the yearly maximum increased if money is transferred from a LIRA to a LIF during a year?*

No. Schedule 1 provides that the maximum amount for the fiscal year will be calculated based on the value of the assets of the plan at the start of that fiscal year.

*Where the assets in a LIF are invested in five-year GICs that will only deposit any earned interest at the end of the five year period, should accrued interest be included in determining the value of the LIF at the start of each year?*

Yes. The value of the assets at the start of a year includes any interest accrued to that date, even if the interest has not yet been paid and even if the interest would be forfeited if the GIC were subsequently cashed in before maturity.



*When can a LIF be converted into a life annuity?  
Can this be done before the owner is 80?*

The key determinant is when payments to the owner begin. Annuity payments may not begin until the individual is entitled to receive a pension benefit, which is generally 55 or an earlier age depending on the terms of the pension plan. The LIF owner may purchase a life annuity at any time but payments under it may not begin before he or she would have been entitled to receive payment of a pension benefit under the pension plan.

*On death of the LIF owner, can the surviving spouse or same-sex partner "step into his or her shoes" and continue the LIF in the spouse's or same-sex partner's name?*

No. Death breaks the locking-in of LIF funds, so the survivor spouse or same-sex partner is entitled to transfer the money in the LIF to an unlocked RRIF. The financial institution administering the LIF should not allow the survivor spouse or same-sex partner to become the successor annuitant to the owner's LIF, even though this is permitted under the ITA for a RRIF.

*Can a LIF owner contribute non-locked-in money to their LIF?*

No. The LIF is intended to be a vehicle for money that originated from a registered pension plan. Individuals are not allowed to combine locked-in funds with non-locked-in money.

*Can the owner of an Ontario LIF combine it with a LIF governed by the laws of the federal government or another province?*

No. The laws of each jurisdiction govern each LIF separately and LIFs governed by different jurisdictions may not be commingled.









## SUPERINTENDENT OF FINANCIAL SERVICES

### Administrator Appointments — Section 71 of the PBA

1. London Life as the Administrator of the Employee Retirement Plan of Cobra Machine Tool Company Inc. (Registration No. 1018183), effective immediately.  
**DATED** at Toronto, Ontario, this 6th day of March, 2003.
2. Mackenzie Financial as the Administrator of the Employees Pension Plan of Alderbrook Industries Limited (Registration No. 0574764), effective immediately.  
**DATED** at Toronto, Ontario, this 6th day of March, 2003.
3. PricewaterhouseCoopers as the Administrator of ABC Rail Limited Pension Plan (Registration No. 104197), effective immediately.  
**DATED** at Toronto, Ontario, this 7th day of February, 2003.
4. PricewaterhouseCoopers as the Administrator of the Pension Plan for Employees of Sealcraft Inc. (Registration No. 995522), effective immediately.  
**DATED** at Toronto, Ontario, this 23rd day of December, 2002.
5. Allan Smart Services as the Administrator of the Pension Plan for Employees of Thomson Kernaghan & Co Ltd. (Registration No. 0310151), effective immediately.  
**DATED** at Toronto, Ontario, this 9th day of December, 2002.
6. Morneau Sobeco as the Administrator of TCT Logistics Inc — Livingston Group Inc. Non-Contributory Plan for Hourly Employees (Registration No. 492363), effective immediately.  
**DATED** at Toronto, Ontario, this 9th day of December, 2002.



## Notices of Proposal to Make an Order

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the PBA relating to the **Employee Retirement Plan for the Employees of Piccione Machine Tool & Gear Mfg., Registration Number 582080 (the "Plan")**;

**TO:** **London Life Insurance Company Group Retirement Services**  
255 Dufferin Avenue  
London ON N6A 4K1

**Attention:** Ms. Darlene Sundercock  
**Administrator**

**AND TO:** **Piccione Machine Tool & Gear Mfg.**  
32 Upton Road  
Scarborough ON M1L 2B8

**Attention:** Ms. Lynda Piccione  
**Employer**

### NOTICE OF PROPOSAL

**I PROPOSE TO MAKE AN ORDER** in respect of the Plan under section 69(1) of the PBA.

#### **PROPOSED ORDER:**

That the Employee Retirement Plan for the Employees of Piccione Machine Tool & Gear Mfg., Registration Number 582080, be wound up in whole effective May 31, 2001.

#### **REASONS:**

1. There was a failure of the employer to make contributions to the pension fund as

required by the Act or the regulations, pursuant to clause 69(1)(b) of the PBA.

2. All or significant portion of the business carried on by the employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the PBA.
3. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the PBA. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>

**YOUR WRITTEN NOTICE** must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.**

**DATED** at North York, Ontario, this 24th day of October, 2002.

K. David Gordon  
Deputy Superintendent, Pensions  
By Delegated Authority

<sup>1</sup>NOTE — PURSUANT to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "PBA");

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make an  
Order under section 69 of the PBA relating to the  
**Pension Plan for the Hourly Employees  
of Magnatek Polygon Transformer Co., a  
division of Magnatek National Electric  
Coil Limited, Registration Number 996942  
(the "Plan");**

**TO:** **Aon Consulting**  
Suite 500  
145 Wellington Street West  
Toronto ON M5J 1H8

**Attention:** Mr. Brad Duce

**Administrator**

**AND TO:** **National Electric Coil  
(Polygon Transformer)**  
50 Northline Road  
North York ON M4B 3E2

**Attention:** Mr. Jim Gray  
General Manager

**Employer**

**AND TO:** **Canadian Union of Operating  
Engineers & General Workers**  
2087 Dundas Street East, Unit 103  
Mississauga ON L4X 2V7

**Attention:** Mr. Grgar Zoran

**Union Representative  
Canadian Union of Operating  
Engineers & General Workers**

**AND TO:** **Doane Raymond Limited**  
P.O. Box 55  
Royal Bank Plaza, Suite 1100,  
North Tower  
Toronto ON M5J 2P9

**Attention:** Mr. Ray Godbold

**Trustee in Bankruptcy of  
Polygon Transformer Inc.**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** in respect  
of the Plan under section 69(1) of the PBA.

### **PROPOSED ORDER:**

That the Pension Plan for the Hourly Employees  
of Magnatek Polygon Transformer Co., a division  
of Magnatek National Electric Coil Limited,  
Registration Number 996942, be wound up in  
whole effective December 31, 1993.

### **REASONS:**

1. There was a cessation or suspension of  
employer contributions to the pension  
fund, pursuant to clause 69(1)(a) of the PBA.
2. There was a failure of the employer to  
make contributions to the pension fund as  
required by the Act or the regulations,  
pursuant to clause 69(1)(b) of the PBA.
3. Such further reasons as may come to my  
attention.

**YOU ARE ENTITLED TO A HEARING** by  
the Financial Services Tribunal (the "Tribunal")  
pursuant to s. 89(6) of the PBA. To request a  
hearing, you must deliver to the Tribunal a writ-  
ten notice that you require a hearing, within  
thirty (30) days after this Notice of Proposal is  
served on you.

<sup>1</sup>NOTE — PURSUANT to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.





**YOUR WRITTEN NOTICE** must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.**

**DATED** at North York, Ontario, this 12th day of November, 2002.

K. David Gordon

Deputy Superintendent, Pensions

By Delegated Authority



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Maple Leaf Foods Inc. Employees Retirement Plan 100, Registration No. 0303180;**

**TO:** **Maple Leaf Foods Inc.**  
150 Bartor Road  
Weston ON M9M 1H1

**Attention:** Joyce Stephenson  
Director, Pensions

**Applicant and Employer**

## **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the Act, consenting to the payment out of the Maple Leaf Foods Inc. Employees Retirement Plan 100, Registration No. 0303180 (the Plan), to Maple Leaf Foods Inc. in the amount of \$29,024,817 as at December 31, 2001, adjusted for actual expenses plus investment earnings or losses thereon to the date of payment.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that all benefits and benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Sharing Agreement defined in paragraph 5 below) among members, former members and any other persons entitled to such payments have been paid, purchased, or otherwise provided for and satisfies me that all requirements of the *Quebec Supplemental Pension Plan Act* R.S.Q. 1990, R-15.1, as amended, have been met.

## **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Maple Leaf Foods Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective December 31, 2001.
3. As at December 31, 2001, the surplus in the Plan was estimated at \$57,772,394.
4. There is a judgement of the Ontario Superior Court of Justice dated June 15, 2001, that the Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 100% of the active members and other members (as defined in the application) and 76.99% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
  - a) 55% to the Employer; and
  - b) 45% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 55% of the surplus in the Plan (after adding investment earnings and deducting expenses related to the wind up of the Plan).
7. The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the Tribunal), pursuant to subsection 89(6) of the Act if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

**YOUR WRITTEN NOTICE** requiring a hearing must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

**Attn:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**DATED** at Toronto, Ontario, this 15th day of November, 2002.

K. David Gordon  
Deputy Superintendent, Pensions

Copy: Randy Bauslaugh, Blake, Cassels &  
Graydon LLP  
Michael Millns, Towers Perrin  
John Evans, Evans Law Firm  
Paul Fox, Fox, Clarke, Dollak  
Davis Brown, Eckler Partners Ltd.

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28, respecting the **Pension Plan for Employees of United Tire & Rubber Co. Limited represented by United Steel Workers of America, Local 3950, Registration Number 0424671 (the "Pension Plan")**;

**TO:** **PricewaterhouseCoopers Inc.**  
P.O. Box 82, Royal Trust Tower  
Toronto-Dominion Centre  
Toronto ON M5K 1G8

**Attention:** Paul Macphail  
Senior Vice-President  
**Administrator of the Pension Plan for Employees of United Tire & Rubber Co. Limited represented by United Steel Workers of America, Local 3950**

**AND TO:** **United Tire & Rubber Co. Limited**  
275 Belfield Road  
Rexdale ON M9W 5C6

**Attention:** Raymond J. Fernandes  
Chief Financial Officer  
**Employer**

**AND TO:** **Ernst & Young Inc.**  
Ernst & Young Tower  
P.O. Box 251, 222 Bay Street  
Toronto-Dominion Centre  
Toronto ON M5K 1J7

**Attention:** Rick Kanabar  
Manager

**Receiver and Manager for United Tire & Rubber Co. Limited**

**AND TO:** **Schonfeld Inc.**  
Suite 2400, 390 Bay Street  
Toronto ON M5H 2Y2

**Attention:** Harlan Schonfeld  
**Trustee in Bankruptcy for United Tire & Rubber Co. Limited**

**AND TO:** **United Steelworkers of America, Local 3950**  
c/o 25 Cecil Street  
Toronto ON M5T 1N1

**Attention:** Jeff Richardson  
**National Representative**

#### **NOTICE OF PROPOSAL TO MAKE AN ORDER**

**I PROPOSE TO MAKE AN ORDER** that the Pension Plan for Employees of United Tire & Rubber Co. Limited represented by United Steelworkers of America, Local 3950, Registration No. 0424671, be wound up in full effective March 14, 2000.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act").

#### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. There was a cessation or suspension or employer contributions to the pension fund.
2. The employer failed to make contributions to the pension fund as required by the Act or the regulations.



3. The employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada)
4. A significant number of members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
5. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

**ANY NOTICE** requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL, IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

**DATED** at Toronto, Ontario, this 15th day of November, 2002.

K. David Gordon  
Deputy Superintendent, Pensions



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28, respecting the **Pension Plan for Wylie Press a division of The Johnstone Group Inc., Registration Number 0324335 (the "Pension Plan")**;

**TO: The Manufacturers Life Insurance Company**

500 King North  
P.O. Box 1602  
Waterloo ON N2J 4C6

**Attention:** Karen Osborne  
Plan Design Specialist

**Administrator of the Pension Plan for Wylie Press a division of The Johnstone Group Inc.**

**AND TO: Wylie Press a division of The Johnstone Group Inc.**

111 Ferrier Street  
Markham ON L3R 3K6

**Attention:** Dianna Cooke  
Comptroller

**Employer**

**AND TO: Shiner Kideckel Zweig Inc.**

10 West Pearce Street  
Suite 4  
Richmond Hill ON L4B 1B6

**Attention:** Joel Kideckel

**Trustee in Bankruptcy for Wylie Press a division of The Johnstone Group Inc.**

### **NOTICE OF PROPOSAL TO MAKE AN ORDER**

**I PROPOSE TO MAKE AN ORDER** that the Pension Plan for Wylie Press a division of The Johnstone Group Inc., Registration No. 0324335, be wound up in full effective January 31, 2000.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act").

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer failed to make contributions to the pension fund as required by the Act or the regulations.
3. The employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada).
4. A significant number of members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
5. Such further reasons as may come to my attention.





**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

**ANY NOTICE** requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL, IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**DATED** at Toronto, Ontario, this 2nd day of December, 2002.

K. David Gordon  
Deputy Superintendent, Pensions

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28, respecting the **Pension Plan for the Employees of C & C International Yachts Limited, Registration Number 0687632 (the "Pension Plan")**;

**TO:**           **The Manufacturers Life Insurance Company**  
500 King North  
P.O. Box 1602  
Waterloo ON N2J 4C6

**Attention:** Yolanda Pingos  
Plan Design Associate  
**Administrator of the Pension Plan for the Employees of C & C International Yachts Limited**

**AND TO:**   **C & C International Yachts Limited**  
P.O. Box 970  
526 Regent Street  
Niagara On The Lake ON L0S 1J0

**Attention:** Ruth Lamarre  
Finance Administrator  
**Employer**

**AND TO:**   **Crawford Smith and Swallow**  
531 Lake Street  
St. Catharines ON L2N 4H6

**Attention:** James A. Cringan  
**Receiver for C & C International Yachts Limited**

## **NOTICE OF PROPOSAL TO MAKE AN ORDER**

**I PROPOSE TO MAKE AN ORDER** that the Pension Plan for the Employees of C & C International Yachts Limited, Registration No. 0687632, be wound up in full effective March 1, 1997.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act").

## **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer failed to make contributions to the pension fund as required by the Act or the regulations.
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
4. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
5. Such further reasons as may come to my attention.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

**ANY NOTICE** requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at

416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL, IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**DATED** at Toronto, Ontario, this 5th day of December, 2002.

K. David Gordon  
Deputy Superintendent, Pensions

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act consenting to a payment out of the **BASF Pension Plan for Canadian Management Represented Employees, Registration No. 556613**;

**TO:** **BASF Canada**  
345 Carlingview Drive  
Toronto ON M9W 6N9

**Attention:** Mr. Peter Sinclair

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(4) of the Act, consenting to the payment out of the BASF Pension Plan for Canadian Management Represented Employees, Registration No. 556613 (the "Plan"), to BASF Canada in the amount of \$219,018.62 as at September 30, 2001 plus interest, at the fund rate thereon, to the date of payment.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. BASF Canada is the employer as defined in the Plan (the "Employer").
2. As a result of a sale March 2, 2001, BASF sold Knoll Pharma Inc. to Abbott Laboratories. All Knoll employees stopped accruing benefits in the Plan on this date and commenced to accrue benefits under a similar plan established by Abbott. As a

result of miscommunication in the new employer's organization, contributions on behalf of these Knoll employees continued to be made directly to the BASF Pension Plan for Canadian Management Represented Employees until September 2001.

3. Evidence of the overpayment to the fund has been submitted to the Financial Services Commission of Ontario.
4. There were no member submissions made about the repayment.
5. The application appears to comply with section 78(4) of the Act.
6. Such further and other reasons as come to my attention.

In accordance with subsection 105.(1) of the Act, an extension of the time limit under subsection 78(4) has been given.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

**YOUR WRITTEN NOTICE** requiring a hearing must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

**Attn:** The Registrar

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**DATED** at Toronto, Ontario, this 10th day of December, 2002.

K. David Gordon

Deputy Superintendent, Pension Division

Copy: Ms. Ofelia Isabel, Towers Perrin



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "PBA");

**AND IN THE MATTER OF** a Proposal of  
the Superintendent of Financial Services to  
Make an Order under section 69 of the PBA  
relating to the **Pension Plan for OSF Inc.,  
Registration Number 594366;**

**TO:** **The Manufacturers Life  
Insurance Company**  
Canadian Pension Operations  
500 King North, P.O. Box 1602  
Waterloo ON N2J 4C6

**Attention:** Ms. Yolanda Pingos  
**Administrator**

**AND TO:** **OSF Inc.**  
5145 Steeles Avenue West  
Weston ON M9L 1R5

**Attention:** Ms. Luann Izzett  
**Employer**

## **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** in respect  
of the Plan under section 69(1) of the PBA.

### **PROPOSED ORDER:**

That the Pension Plan for OSF Inc., Registration  
Number 594366 (the "Plan"), be wound up in  
whole effective April 16, 2002.

### **REASONS:**

1. The employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the PBA.
2. All or a significant portion of the business carried on by the employer at a specific loca-

tion was discontinued, pursuant to clause 69(1)(e) of the PBA.

3. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the PBA. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>

**YOUR WRITTEN NOTICE** must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING  
WITHIN THIRTY (30) DAYS, I MAY MAKE  
THE ORDER PROPOSED IN THIS NOTICE.**

**DATED** at North York, Ontario, this 20th day  
of December, 2002.

K. David Gordon  
Deputy Superintendent, Pensions

<sup>1</sup>NOTE — PURSUANT to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 87(2) of the Act relating to the **Ontario Teachers' Pension Plan, Registration Number 0345785 (the "Plan")**;

**TO:** **Ontario Teachers' Pension Plan Board**  
5650 Yonge Street  
Toronto, Ontario  
M2M 4H5

**Attention:** Claude R. Lamoureux,  
President & Chief Executive Officer  
**Administrator**

**AND TO:** **Belyea & Associates Inc.**  
208-39 Kimbercroft Court,  
Scarborough, Ontario  
M1S 5B5

**Attention:** Bryan N. Belyea,  
Consulting Actuary  
**Agent of the Former Plan Member's Former Spouse**

## **NOTICE OF PROPOSAL**

**I PROPOSE** to make an order under sections 87(2)(a) and (c) of the Act requiring the administrator of the Plan (the "Administrator") to pay Ronald A. Wilson, a former Member of the Plan (the "Plan member") his pension in the form of a joint and survivor pension in accordance with section 44(1) of the Act.

### **REASONS:**

1. The Superintendent may make an order under section 87 if he is of the opinion, on reasonable and probable grounds, that the pension plan or pension fund is not being administered in accordance with the Act,

the regulations under the Act (the "regulations"), or the plan and/or that the administrator of the pension plan is contravening a requirement of the Act or the regulations.

2. Section 44(1) of the Act provides that every pension paid under a pension plan to a former member who has a spouse on the date that the payment of the first instalment of the pension is due shall be a joint and survivor pension. Section 44(4)(b) states that section 44(1) does not apply in respect of a former member who is living separate and apart from his or her spouse on the date that the payment of the first instalment of the pension is due.
3. Mr. Belyea, agent for the Plan member, notified the Superintendent that the Administrator has determined that the Plan member may not receive his pension in the form of a joint and survivor pension. The Plan member had a retirement date of January 31, 2000 and a pension start date of February 1, 2000. The Plan member and his spouse separated on February 7, 2000. The Plan member applied for the pension on February 21, 2000. The first monthly pension payment was deposited in the Plan member's account on April 28, 2000 and retroactive payments covering the months of February and March were deposited in his account on May 5, 2000.
4. Section 67(1) of the Plan provides that if a member dies on or after the first day of the month in which the first instalment of the pension is due, the person who is the spouse on the date the first instalment of the pension was due is entitled to a survivor pension. Section 67(2) states that this requirement does not apply if the member and the spouse were living separate and



- apart on the date the first instalment of the member's pension was due.
5. Section 43(3) of the Plan provides that a retirement pension begins as of the beginning of the month following the date the member ceased to be employed in education or, at the election of the member, of any month thereafter (subject to the applicable *Income Tax Act* (Canada) rules).
  6. The term "due" is defined in *Black's Law Dictionary*, 7th ed., as "owing or payable, constituting a debt" and in the *Dictionary of Canadian Law*, 2nd ed., as "payable, owing." The test in section 44(1) is the due date, not the date of actual payment.
  7. The Plan member elected a pension start date of February 1, 2000. The payment of the first instalment of his pension was due on February 1, 2000, although it was not actually physically deposited into his account until May 5, 2000. As the Plan member and his spouse did not separate until February 7, 2000, he is entitled to receive his pension in the form of a joint and survivor pension under section 44 of the Act.
  8. Section 48 of the Plan, which deals with the mechanics of processing a retirement application, is administrative in nature only. It cannot operate to remove the requirement that the pension be paid in the form of a joint and survivor pension in circumstances where the Plan member and his spouse were not living separate and apart on the date the payment of the first instalment of the pension was due (in this case, February 1, 2000).

9. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>

**YOUR WRITTEN NOTICE** must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO MAKE THE ORDER AS PROPOSED IN THIS NOTICE.**

**DATED** at North York, Ontario, this 8th day of January, 2003.

K. David Gordon  
Deputy Superintendent, Pensions

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the PBA relating to the **Pension Plan for Employees of Pelee Group, Registration Number 1062512;**

**TO:** **London Life Insurance Company**  
Group Retirement Services  
255 Dufferin Avenue  
London ON N6A 4K1

**Attention:** Ms. Nancy Galpin  
**Administrator**

**AND TO:** **Pelee Group**  
P.O. Box 85  
Kingsville ON N9Y 2E8

**Attention:** Ms. Paula Pope  
**Employer**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** in respect of the Plan under section 69(1) of the PBA.

### **PROPOSED ORDER:**

That the Pension Plan for Employees of Pelee Group, Registration Number 1062512 (the "Plan"), be wound up in whole effective November 30, 2001, and that the wind up apply to all members who terminated employment on or after October 14, 2001.

### **REASONS:**

1. There is a cessation or suspension of contributions to the pension fund of the Plan;

2. There is a failure of the employer to make contributions to the pension fund as required by the PBA or the regulations; and
3. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the PBA. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>

**YOUR WRITTEN NOTICE** must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.**

**DATED** at North York, Ontario, this 17th day of January, 2003.

K. David Gordon  
Deputy Superintendent, Pensions

<sup>1</sup>NOTE — PURSUANT to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");  
**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the PBA relating to the **Group Pension Plan for the Employees of Mount Forest Ambulance Service Ltd., Registration Number 983510;**

**TO:** **Equitable Life Insurance Company**  
One Westmount Road, North  
P.O. Box 1603  
Waterloo ON N2J 4C7

**Attention:** Ms. Lerma Aguto  
**Administrator**

**AND TO:** **Mount Forest Ambulance Service Ltd.**  
P.O. Box 4011  
Mount Forest ON N0G 2L0

**Attention:** Mr. James A. Borrett, President  
**Employer**

**AND TO:** **Ontario Public Service Employees' Union**  
100 Lesmill Road  
Toronto ON M3B 3P8

**Attention:** Ms. Shirley McVittie  
Senior Benefits Counsellor  
**OPSEU, Local 226 Representative**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** in respect of the Plan under section 69(1) of the PBA.

### **PROPOSED ORDER:**

That the Group Pension Plan for the Employees of Mount Forest Ambulance Service Ltd., Registration Number 983510 (the "Plan"), be wound up in whole effective January 31, 2001.

### **REASONS:**

1. There was a cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the PBA;
2. A significant number of members of the Plan ceased to be employed by the employer as a result of the discontinuance of the business of the employer, pursuant to clause 69(1)(d) of the PBA;
3. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the PBA. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>

**YOUR WRITTEN NOTICE** must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

<sup>1</sup>NOTE — PURSUANT to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



**IF YOU FAIL TO REQUEST A HEARING  
WITHIN THIRTY (30) DAYS, I MAY MAKE  
THE ORDER PROPOSED IN THIS NOTICE.**

**DATED** at North York, Ontario, this 7th day of  
February, 2003.

K. David Gordon  
Deputy Superintendent, Pensions



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make an  
Order under section 69 of the Act, respecting  
the **Everest & Jennings Canadian Limited  
Employees Pension Plan, Registration  
Number 0527671 (the "Pension Plan")**;

**TO:** **London Life Insurance  
Company**  
Suite 320  
33 Yonge Street  
Toronto ON M5S 4C6

**Attention:** Lynn Barron  
Customer Service Specialist  
**Administrator of the  
Everest & Jennings Canadian  
Limited  
Employees Pension Plan**

**AND TO:** **Everest & Jennings Canadian  
Limited**  
111 Snidercroft Road  
Concord ON L4K 2J8

**Attention:** William N. James  
Vice-President Finance  
**Employer**

**AND TO:** **Deloitte & Touche Inc.**  
181 Bay Street  
Suite 1400  
Toronto ON M5J 2V1

**Attention:** Robert Paul  
Partner  
**Trustee in Bankruptcy for  
Everest & Jennings Canadian  
Limited**

### **NOTICE OF PROPOSAL TO MAKE AN ORDER**

**I PROPOSE TO MAKE AN ORDER** that  
the Everest & Jennings Canadian Limited  
Employees Pension Plan, Registration No.  
0527671, be wound up in full effective  
December 19, 2001.

I propose to make this order pursuant to subsection 69(1) of the Act.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
3. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
4. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.





**ANY NOTICE** requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**DATED** at Toronto, Ontario, this 13th day of February, 2003.

K. David Gordon  
Deputy Superintendent, Pensions



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make an  
Order under section 69 of the Act, in respect of  
the **Employee Retirement Plan for the  
Employees of Rosko Forestry Operations  
Ltd., Registration No. 1022409;**

**TO:** **Rosko Forestry Operations  
Ltd.**

P.O. Box 753  
953 Government Road West  
Kirkland Lake, Ontario  
P2N 3K1

**Attention:** John Joseph Rosko, President  
**Employer and Administrator**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** in respect  
of the Employee Retirement Plan for Employees  
of Rosko Forestry Operations Ltd., Registration  
No. 1022409, under subsection 69(1) of the Act.

### **PROPOSED ORDER:**

I order that the Employee Retirement Plan for  
Employees of Rosko Forestry Operations Ltd.,  
Registration No. 1022409, be wound up in  
whole effective the date of the order proposed  
herein.

### **REASONS FOR THE ORDER:**

1. Rosko Forestry Operations Ltd. is the  
employer and administrator of the  
Employee Retirement Plan for Employees of  
Rosko Forestry Operations Ltd, Registration  
No. 1022409.

2. The last payment of a required employer  
contribution was made on August 15, 2002,  
in respect of employer contributions for the  
month ending October 31, 2001. The last  
remittance of voluntary employee contribu-  
tions was made on September 20, 2002, in  
respect of employee contributions deducted  
during the months ending November 30,  
2001, December 31, 2001, and January 31,  
2002.
3. Therefore, there was a cessation or suspen-  
sion of employer contributions to the pen-  
sion fund, within the meaning of clause  
69(1)(a) of the Act.
4. Therefore, the employer failed to make con-  
tributions to the pension fund as required  
by the Act or the regulations within the  
meaning of clause 69(1)(b) of the Act.
5. Such further and other reasons as may come  
to my attention.

**YOU ARE ENTITLED TO A HEARING** by  
the Financial Services Tribunal (the "Tribunal"),  
pursuant to subsection 89(6) of the Act. To  
request a hearing, you must deliver to the  
Tribunal a written notice that you require a  
hearing within thirty (30) days after this Notice  
of Proposal is served on you.<sup>1</sup>

**YOUR WRITTEN NOTICE** must be delivered  
to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by telephone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.**

**DATED** at North York, Ontario, this 13th day of February, 2003.

K. David Gordon  
Deputy Superintendent, Pensions



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 88 of the Act requiring the preparation of a new valuation report for the **Pension Plan for Slater Stainless Corp. Members of the National Automobile Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Registration Number 561456;**

**TO:** **Slater Stainless Corp.**  
Markborough Place  
6711 Mississauga Rd., Ste. 202  
Mississauga ON L5N 2W3

**Attention:** Mr. Paul Davis,  
Vice President & General Counsel  
**Employer and Administrator**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO ORDER** Slater Stainless Corp., pursuant to section 88 of the Act, to prepare and file a new valuation report under section 14 of Regulation 909, R.R.O. 1990, as amended (the "Regulation") for the Pension Plan for Slater Stainless Corp. Members of the National Auto-mobile Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Registration Number 561456 (the "Plan") as at January 1, 2002, that calculates the solvency asset adjustment component of the solvency deficiency by applying an averaging method that stabilizes short-term fluctuations in the market value of the Plan assets calculated over a period that does not commence before July 1, 2001, within sixty (60) days from the date of the Order.

### **REASONS FOR THE PROPOSAL TO MAKE AN ORDER:**

1. Slater Stainless Corp. ("Slater") is the employer and the administrator of the Plan.
2. Slater filed a valuation report as at January 1, 2002 for the Plan dated May 2002 (and subsequently filed an updated valuation report dated November 2002 to take into account the impact of an Early Retirement Window (the "Report")) as required under section 14(1) of the Regulation. The Report was prepared by Aon Consulting, Inc.
3. Section 17(1) of the Regulation requires a person preparing a section 14 valuation report to perform a valuation to determine the existence of a solvency deficiency (the "solvency valuation"). Section 14(8) of the Regulation requires a section 14 valuation report to indicate, on the basis of a solvency valuation, whether there is a solvency deficiency and the amount of the solvency deficiency. "Solvency deficiency" is defined in section 1(2) of the Regulation as the amount by which the sum of the solvency liabilities, the solvency liability adjustment and the prior year credit balance exceeds the adjusted asset value (which is the sum of the solvency assets and the solvency asset adjustment).
4. "Solvency assets" is defined in section 1(2) of the Regulation, and for the purposes of the Report means the market value of investments held by the Plan plus cash and accrued or receivable income.
5. "Solvency asset adjustment" is defined in section 1(2) of the Regulation in multiple parts, but the relevant component for the purposes of the Report is part (a) which is, "the amount, positive or negative, by which the value of the solvency assets are adjusted



as a result of applying an averaging method that stabilizes short-term fluctuations in the market value of the plan assets calculated over a period of not more than five years."

6. For the purposes of the solvency valuation, the Report adopted a solvency asset adjustment method which considers the average ratio of the market to book value of the Plan assets over the nine (9) quarter-ends prior to the valuation date. In prior reports, which were prepared by another actuarial firm, such a solvency asset adjustment method was not used.
7. The method used to calculate the solvency asset adjustment in the Report is set out on page 34 of the Report. Over the previous nine (9) quarters, the average ratio of the market value to the book value of the Plan assets was 1.5886. On January 1, 2002, the actual ratio of the market value to the book value of the Plan assets was 1.0713. In the Report, the book value of the Plan assets on January 1, 2002 was multiplied by 1.5886 in order to determine the solvency asset adjustment for the purposes of the solvency valuation.
8. The solvency asset adjustment method used in the Report resulted in an adjusted asset value that is 47.8% greater than the market value of the Plan assets on January 1, 2002.
9. The market value of the Plan assets (adjusted for an expense reserve and contributions receivable) is \$139,060,000. The adjusted asset value is \$205,579,000. The solvency liability is \$153,965,000. Therefore, the solvency asset adjustment method used in the Report has the effect of eliminating the solvency deficiency that would otherwise have existed had the solvency asset adjustment not resulted in an adjusted asset value that is 47.8% greater than the market value of the Plan assets on January 1, 2002.
10. Prior to 2001, the market value of the Plan assets consistently exceeded the book value of the Plan assets by approximately 60% to 85%. The Plan assets were sold and repurchased on June 30, 2001, making the market value and book value of the Plan assets identical.
11. The Report's solvency asset adjustment method used a historical average ratio of market to book value that included seven (7) quarters in which the excess of market to book value was unrealized. Upon the sale and repurchase of the Plan assets on June 30, 2001, the excess of market to book value was realized and incorporated into the book value. Therefore, to apply a historical average ratio based on the prior book value to the present book value is to double count the excess of market to book value which occurred in the seven (7) quarters prior to June 30, 2001.
12. Section 88 of the Act authorizes the Superintendent of Financial Services (the "Superintendent") to make an order that may include, but is not limited to, requiring the preparation of a new report and specifying the assumptions or methods or both that shall be used in the preparation of the new report.
13. A section 88 order may be made when one of the conditions of section 88(2) has been met.
14. Section 88(2)(a) authorizes the Superintendent to make an order where the Superintendent is of the opinion that the assumptions or methods used in the preparation of a report required under the Act or the Regulation in respect of a pension plan are inappropriate for a pension plan.



15. **The Superintendent is of the opinion that the method of calculating the solvency asset adjustment adopted in the Report is inappropriate for the Plan.** It is inappropriate to calculate the solvency asset adjustment by applying the ratio of market to book value in the seven (7) quarters prior to June 30, 2001 without considering the impact of the sale and repurchase of the Plan assets on the book value after June 30, 2001.
16. Section 88(2)(b) authorizes the Superintendent to make an order where the Superintendent is of the opinion that the assumptions or methods used in the preparation of a report required under this Act or the Regulation in respect of a pension plan are not consistent with accepted actuarial practice.
17. **The Superintendent is of the opinion that the method of calculating the solvency asset adjustment adopted in the Report is not consistent with accepted actuarial practice** in that a method that produces an adjusted asset value that is 47.8% greater than the market value would not be considered accepted actuarial practice.
18. Section 88(2)(c) authorizes the Superintendent to make an order where the Superintendent is of the opinion that a report submitted in respect of a pension plan does not meet the requirements and qualifications of this Act, the Regulation or the pension plan.
19. **The Superintendent is of the opinion that the method of calculating the solvency asset adjustment adopted in the Report does not meet the requirements and qualifications of this Act, the Regulation or the Plan.** Specifically, the method of calculating the solvency asset adjustment does not meet the definition of "solvency asset adjustment" in section 1(2) of the Regulation. The solvency asset adjustment method used in the Report does not stabilize short-term fluctuations in the market value of the Plan assets; rather, it double counts the prior excess of market over book value, resulting in a distortion of the solvency deficiency calculation.
20. Such further and other reasons as may come to my attention.
- YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>
- YOUR WRITTEN NOTICE** must be delivered to:
- Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York, Ontario  
M2N 6L9
- Attention:** The Registrar

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.





**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.**

**DATED** at North York, Ontario, February 17, 2003.

K. David Gordon  
Deputy Superintendent, Pensions





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 88 of the Act requiring the preparation of a new valuation report for the **Pension Plan for Slater Stainless Corp. Members of the United Steel Workers of America (Local 7777), Registration Number 561464;**

**TO:** **Slater Stainless Corp.**  
Markborough Place  
6711 Mississauga Rd., Ste. 202  
Mississauga ON L5N 2W3

**Attention:** Mr. Paul Davis,  
Vice President & General Counsel  
**Employer and Administrator**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO ORDER** Slater Stainless Corp., pursuant to section 88 of the Act, to prepare and file a new valuation report under section 14 of Regulation 909, R.R.O. 1990, as amended (the "Regulation") for the Pension Plan for Slater Stainless Corp. Members of the United Steel Workers of America (Local 7777), Registration Number 561464 (the "Plan") as at January 1, 2002, that calculates the solvency asset adjustment component of the solvency deficiency by applying an averaging method that stabilizes short-term fluctuations in the market value of the Plan assets calculated over a period that does not commence before July 1, 2001, within sixty (60) days from the date of the Order.

### **REASONS FOR THE PROPOSAL TO MAKE AN ORDER:**

1. Slater Stainless Corp. ("Slater") is the employer and the administrator of the Plan.

2. Slater filed a valuation report as at January 1, 2002 for the Plan dated May 2002, (and subsequently filed an updated valuation report dated August 2002 to take into account the impact of an Early Retirement Window (the "Report")) as required under section 14(1) of the Regulation. The Report was prepared by Aon Consulting, Inc.
3. Section 17(1) of the Regulation requires a person preparing a section 14 valuation report to perform a valuation to determine the existence of a solvency deficiency (the "solvency valuation"). Section 14(8) of the Regulation requires a section 14 valuation report to indicate, on the basis of a solvency valuation, whether there is a solvency deficiency and the amount of the solvency deficiency. "Solvency deficiency" is defined in section 1(2) of the Regulation as the amount by which the sum of the solvency liabilities, the solvency liability adjustment and the prior year credit balance exceeds the adjusted asset value (which is the sum of the solvency assets and the solvency asset adjustment).
4. "Solvency assets" is defined in section 1(2) of the Regulation, and for the purposes of the Report means the market value of investments held by the Plan plus cash and accrued or receivable income.
5. "Solvency asset adjustment" is defined in section 1(2) of the Regulation in multiple parts, but the relevant component for the purposes of the Report is part (a) which is, "the amount, positive or negative, by which the value of the solvency assets are adjusted as a result of applying an averaging method that stabilizes short-term fluctuations in the market value of the plan assets calculated over a period of not more than five years."



6. For the purposes of the solvency valuation, the Report adopted a solvency asset adjustment method which considers the average ratio of the market to book value of the Plan assets over the nine (9) quarter-ends prior to the valuation date. In prior reports, which were prepared by another actuarial firm, such a solvency asset adjustment method was not used.
7. The method used to calculate the solvency asset adjustment in the Report is set out on page 34 of the Report. Over the previous nine (9) quarters, the average ratio of the market value to the book value of the Plan assets was 1.5656. On January 1, 2002, the actual ratio of the market value to the book value of the Plan assets was 1.0713. In the Report, the book value of the Plan assets on January 1, 2002 was multiplied by 1.5656 in order to determine the solvency asset adjustment for the purposes of the solvency valuation.
8. The solvency asset adjustment method used in the Report resulted in an adjusted asset value that is 45.0% greater than the market value of the Plan assets on January 1, 2002.
9. The market value of the Plan assets (adjusted for an expense reserve and contributions receivable) is \$20,220,000. The adjusted asset value is \$29,314,000. The solvency liability is \$22,402,000. Therefore, the solvency asset adjustment method used in the Report has the effect of eliminating the solvency deficiency that would otherwise have existed had the solvency asset adjustment not resulted in an adjusted asset value that is 45.0% greater than the market value of the Plan assets on January 1, 2002.
10. Prior to 2001, the market value of the Plan assets consistently exceeded the book value of the Plan assets by approximately 60% to 85%. The Plan assets were sold and repurchased on June 30, 2001, making the market value and book value of the Plan assets identical.
11. The Report's solvency asset adjustment method used a historical average ratio of market to book value that included seven (7) quarters in which the excess of market to book value was unrealized. Upon the sale and repurchase of the Plan assets on June 30, 2001, the excess of market to book value was realized and incorporated into the book value. Therefore, to apply a historical average ratio based on the prior book value to the present book value is to double count the excess of market to book value which occurred in the seven (7) quarters prior to June 30, 2001.
12. Section 88 of the Act authorizes the Superintendent of Financial Services (the "Superintendent") to make an order that may include, but is not limited to, requiring the preparation of a new report and specifying the assumptions or methods or both that shall be used in the preparation of the new report.
13. A section 88 order may be made when one of the conditions of section 88(2) has been met.
14. Section 88(2)(a) authorizes the Superintendent to make an order where the Superintendent is of the opinion that the assumptions or methods used in the preparation of a report required under the Act or the Regulation in respect of a pension plan are inappropriate for a pension plan.





15. **The Superintendent is of the opinion that the method of calculating the solvency asset adjustment adopted in the Report is inappropriate for the Plan.** It is inappropriate to calculate the solvency asset adjustment by applying the ratio of market to book value in the seven (7) quarters prior to June 30, 2001, without considering the impact of the sale and repurchase of the Plan assets on the book value after June 30, 2001.
16. Section 88(2)(b) authorizes the Superintendent to make an order where the Superintendent is of the opinion that the assumptions or methods used in the preparation of a report required under this Act or the Regulation in respect of a pension plan are not consistent with accepted actuarial practice.
17. **The Superintendent is of the opinion that the method of calculating the solvency asset adjustment adopted in the Report is not consistent with accepted actuarial practice** in that a method that produces an adjusted asset value that is 45.0% greater than the market value would not be considered accepted actuarial practice.
18. Section 88(2)(c) authorizes the Superintendent to make an order where the Superintendent is of the opinion that a report submitted in respect of a pension plan does not meet the requirements and qualifications of this Act, the Regulation or the pension plan.
19. **The Superintendent is of the opinion that the method of calculating the solvency asset adjustment adopted in the Report does not meet the requirements and qualifications of this Act, the Regulation or the Plan.** Specifically, the method of calculating the solvency asset adjustment does not meet the definition of "solvency asset adjustment" in section 1(2) of the Regulation. The solvency asset adjustment method used in the Report does not stabilize short-term fluctuations in the market value of the Plan assets; rather, it double counts the prior excess of market over book value, resulting in a distortion of the solvency deficiency calculation.
20. Such further and other reasons as may come to my attention.
- YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>
- YOUR WRITTEN NOTICE** must be delivered to:
- Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York, Ontario  
M2N 6L9
- Attention:** The Registrar

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.**

**DATED** at North York, Ontario, February 17, 2003.

K. David Gordon  
Deputy Superintendent, Pensions

## Notices of Proposal to Make a Declaration

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Zettel Metalcraft Ltd. Local 396 CAW Pension Plan (the "Pension Plan")**, Registration Number 0933515;

**TO:** **Morneau Sobeco**  
1500 Don Mills Road  
Suite 500  
Toronto ON M3B 3K4

**Attention:** Mr. Al Kiel  
Partner

**Administrator of the  
Zettel Metalcraft Ltd.  
Local 396 Pension Plan**

**AND TO:** **Zettel Metalcraft Ltd.**  
95 Cousins Drive  
Aurora ON L4G 3H1

**Attention:** Mr. Tim Daley  
Controller

**Employer**

**AND TO:** **Ernest Leyshon-Hughes C.A.**  
7 Duke Street West  
Suite 204  
Kitchener ON N2H 6M7

**Attention:** Mr. Ernest Leyshon-Hughes  
**Trustee in Bankruptcy,  
Zettel Metalcraft Ltd.**

**AND TO:** **CAW Local 396**  
205 Placer Court  
Toronto ON M2H 3H9

**Attention:** Mr. Sym Gill  
Director  
**Union**

### NOTICE OF PROPOSAL TO MAKE A DECLARATION

#### **WHEREAS:**

1. The Zettel Metalcraft Ltd. Local 396 CAW Pension Plan, Registration No. 0933515 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective January 24, 1997; and
4. The Superintendent of Pensions initially appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on March 20, 1997 and on July 11, 2002, appointed Morneau Sobeco as Administrator to replace Deloitte & Touche; and

**NOW THEREFORE TAKE NOTICE** I propose to consider to make a declaration pursuant to section 83 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Supplement to the Actuarial Valuation Report filed by the Administrator indicates an estimated funding deficiency of \$1,095,300 as at May 31, 2002 and an estimated claim against the Guarantee Fund as at May 31, 2002 of \$954,200.00.





2. Ernest Leyshon-Hughes was appointed Trustee in Bankruptcy of Zettel Metalcraft Ltd. on February 6, 1997.
3. The Trustee in Bankruptcy for Zettel Metalcraft Ltd. has advised the Administrator that there are no funds available from the estate of Zettel Metalcraft Ltd. to make payment to the Pension Plan.
4. The Administrator has advised that they are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

**ANY NOTICE** requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

**DATED** at North York, Ontario this 5th day of February, 2003.

K. David Gordon  
Deputy Superintendent, Pensions

<sup>1</sup>PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

## Notices of Proposal to Refuse to Make an Order

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended (the "PBA");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Refuse to Make an Order, under section 87(2)(a) of the PBA, Respecting the **Effem Inc. Associates' Retirement Plan, Registration No. 0393363**;

**TO:** **Mr. Constantin Munteanu**  
213 Maplegrove Ave.  
Bradford, Ontario  
L3Z 1V3

### **Applicant**

**AND TO:** **Effem Inc.**  
37 Holland Drive  
Bolton, Ontario  
L7E 5S4

**Attention:** Ms. Alison Lumb  
Manager, Payroll, Pension &  
Accounts Payable  
**Administrator**

## **NOTICE OF PROPOSAL**

**I PROPOSE TO REFUSE TO MAKE AN ORDER** under section 87(2)(a) of the PBA that the administrator of the Effem Inc. Associates' Retirement Plan, Registration No. 0393363 (the "Plan"), recalculate Mr. Munteanu's pension benefits.

## **REASONS FOR THE PROPOSAL TO REFUSE:**

1. Mr. Munteanu retired from Effem Inc. on July 1, 1999 and began receiving benefits under the Plan. He requests the Superintendent of Financial Services (the "Superintendent") to order Effem Inc. (the "Administrator") to recalculate his benefits to take into account his full overtime pay for the years 1995, 1996, and 1997 as well as his holiday pay for 1996 and 1997.

2. The Superintendent can make an Order under section 87(2)(a) of the PBA if he is of the opinion, on reasonable and probable grounds, that a pension plan is not being administered in accordance with the PBA, the regulations made thereunder or the pension plan.

3. Section 7.01 of the Plan states:

### **Normal/Postponed Retirement**

**Pension:** A Member who retires under the provisions of Section 6.01 or Section 6.03 shall be eligible to receive a monthly pension equal to the sum of the following:

- (a) 1.3% of his Final Average Earnings up to the Final Average YMPE multiplied by his Credited Service; plus
- (b) 2.0% of his Final Average Earnings in excess of the Final Average YMPE multiplied by his Credited Service.

4. Section 1.19 of the Plan states:

**"Final Average Earnings"** means the monthly average (computed as provided below) of the Earnings received by the Member from the Employer in that period of 156 (52, effective January 1, 1994) consecutive calendar weeks occurring within the 260 (156, effective January 1, 1994) calendar week period ending with his Termination Date during which he received his highest Earnings from the Employer. The monthly average of a Member's Earnings shall be computed as follows:

- (a) First, by dividing the Member's total Earnings during the applicable 156 (52, effective January 1, 1994) week period specified above by 156 (52, effective January 1, 1994); and
- (b) Second, by multiplying the amount determined under (a) above by  $4^{1/3}$ .



5. Section 1.15 of the Plan states:

**"Earnings"** includes the Member's (i) base and punctuality pay, shift premium and other bonuses excluding lump sum salary adjustment payments plus (ii) overtime pay to a maximum of 10% of (i) for services rendered to the Employer excluding cash in lieu of vacation.

6. Mr. Munteanu's position is that his full overtime pay for the years 1995, 1996 and 1997 should be included in "Earnings" for the purposes of calculating his monthly pension entitlement. He also submits that his holiday pay for 1996 and 1997 should be included in the calculation of his pension.

7. In an April 30, 2002 letter, Ms. Alison Lumb of the Administrator provided Mr. Munteanu with a copy of his pension calculations. She stated that his holiday pay was included in his base pay for 1996 and 1997. She pointed out that, under the definition of "Earnings" in section 1.15 of the Plan, overtime pay is included only up to the level of 10% of base pay.

8. The following example is based on the information set out in the April 30 letter from Ms. Lumb. In 1997, Mr. Munteanu's overtime pay was \$30,552.94. His net earnings excluding overtime pay were \$65,845.23. Therefore, his overtime pay was included in calculating "Earnings" only to the extent of 10% of \$65,845.23, or \$6,584.52. Although his gross earnings were \$96,398.17, only \$72,429.75 were attributable to "Earnings" as defined in the Plan.

9. In a letter of May 22, 2002, Ms. Lumb points out that under the Plan (section 1.19), only the final three years of earnings are used in calculating a Member's pension entitlement. Therefore it is unnecessary to include the year 1995 in the calculations.

10. It appears that the Plan Administrator has complied with the provisions of the Plan and has correctly calculated Mr. Munteanu's pension entitlement.

11. For the reasons set out above, the Superintendent is not of the opinion, on reasonable and probable grounds, that the Plan is not being administered in accordance with the PBA, the regulations or the Plan.

12. Such and further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the PBA. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>

**YOUR WRITTEN NOTICE** must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

<sup>1</sup>NOTE — PURSUANT to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO MAKE THE ORDER PROPOSED IN THIS NOTICE.**

**DATED** at North York, Ontario, November 1, 2002.

K. David Gordon  
Deputy Superintendent, Pensions  
(by Delegated Authority)





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Refuse to Make an Order under Section 87(1) of the PBA Respecting the **AFG Industries Ltd. Retirement Plan as amended and restated as of March 1, 1998, Registration Number 290700 (the "AFG Plan")**;

**TO:** **Mr. Robert Kerchbaumer**

R.R. 2

Ravena ON N0H 2E0

**Applicant**

**AND TO:** **AFG Industries Ltd.**

P.O. Box 929

Kingston TN 37662

**Attention:** Mr. Rick Stapleton  
Director, Human Resources

**Employer and Administrator**

### **NOTICE OF PROPOSAL**

#### **I PROPOSE TO REFUSE TO MAKE AN ORDER**

under section 87(1) of the PBA directing AFG Industries Ltd. (the "Administrator") to calculate the amount of the annual pension payable to the Applicant under section 5.2(c) of the AFG Plan on the basis that section 5.2(c)(i) applies to the Applicant.

#### **REASONS FOR THE REFUSAL:**

1. The Applicant was a member of the Glaverbel Industries Inc. Salaried Pension Plan (the "Glaverbel Plan") immediately prior to January 1, 1983. The Applicant is therefore a Glaverbel Member within the meaning of 2.1(r) of the AFG Plan.
2. Section 5.2(c) of the AFG Plan sets out the formula for calculating the amount of annual pension payable to a Glaverbel Member. The first component of the formula is set

out in section 5.2(c)(i), as follows: "1% of the Member's Glaverbel Earnings Average up to, plus 1.75% of his Glaverbel Earnings Average in excess of, the YMPE Average, multiplied by his Glaverbel Past Service".

3. "Glaverbel Past Service" is defined in section 2.1(s) of the AFG Plan as "the number of years of Glaverbel Plan pensionable service prior to 1970, as determined in accordance with the provisions of the Glaverbel Plan."
4. The Glaverbel Plan defines "Past Service" in section 1.16 as "completed years of Service as an Employee before 1970, excluding the first such year". "Service" is defined in section 1.19 of the Glaverbel Plan as "continuous employment with the Company, including periods of temporary suspensions of employment with or without remuneration." "Employee" is defined in section 1.7 of the Glaverbel Plan as "a regular salaried employee of the Company." "Company" is defined in section 1.4 of the Glaverbel Plan as "Glaverbel-Mecaniver Canada Limited or an Associated Company." The "Associated Companies" are listed in section 1.3 of the Glaverbel Plan.
5. For the Applicant's pre-1970 service to be counted as "Glaverbel Past Service" within the meaning of section 5.2(c)(i) of the AFG Plan, it must be established that he had "Past Service" as an "Employee" with either Glaverbel-Mecaniver Canada Limited or one of the companies listed as an "Associated Company" in section 1.3 of the Glaverbel Plan.
6. The Administrator has calculated the Applicant's pension on the basis that he does not have "Glaverbel Past Service" and has calculated his pension on the basis that section 5.2(c)(iv) of the AFG Plan applies to the Applicant's service prior to 1970.



7. The evidence is that the Applicant was an employee of a company called Consolidated Glass Industries Limited ("CGI") from May 6, 1959 until December 1, 1969. He was a member of The Retirement Plan for Salaried Employees of Consolidated Glass Industries Limited (the "CGI Plan"). The CGI Plan was wound up and its assets distributed effective December 1, 1969.
8. CGI does not appear on the list of "Associated Companies" in section 1.3 of the Glaverbel Plan.
9. While there is evidence that Glaverbel, S.A. of Brussels, Belgium became the sole shareholder of CGI in 1965, there is no basis to conclude that this resulted in a change in the Applicant's employment status. The Applicant continued to receive his remuneration from CGI until December 15, 1969. The *Pension Benefits Act, 1965*, S.O. 1965, Chapter 342 (the "1965 PBA") defines "employer" in relation to an "employee" as "the person, partnership, firm, association, institution or other unincorporated organization or corporation, wherever incorporated, carrying on business or established in Ontario, from whom the employee receives his remuneration" (Emphasis added.). A change in shareholders does not in itself change the employment status of the employees or the employer corporation.
10. The Applicant therefore does not have "Past Service" as an "Employee" with either Glaverbel-Mecaniver Canada Limited or one of the companies listed as an "Associated Company" in section 1.3 of the Glaverbel

Plan and therefore does not have "Glaverbel Past Service" within the meaning of section 5.2(c)(i) of the AFG Plan. He is therefore not entitled to have the amount of his annual pension under the AFG Plan calculated on the basis that section 5.2(c)(i) applies to him.

11. The Superintendent of Financial Services (the "Superintendent") can make an order under section 87(1) if he is of the opinion, on reasonable and probable grounds, that the pension plan or pension fund is not being administered in accordance with the pension plan.
12. For the reasons set out above, the Superintendent is not of the opinion that the AFG Plan is not being administered in accordance with its terms.
13. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>

**YOUR WRITTEN NOTICE** must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.





**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO MAKE THE ORDER AS PROPOSED IN THIS NOTICE.**

**DATED** at Toronto, Ontario, this 8th day of November, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division  
By Delegated Authority



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "Act" );

**AND IN THE MATTER OF** a request for an  
Order under section 87 of the Act submitted on  
behalf of Barbara Lewis, spouse and beneficiary  
of Harold Lewis, deceased, in connection with  
the calculation of pre-retirement death benefits  
in the **Retirement Plan for Unionized  
Employees of Donohue Forest Products  
Inc. — Pulp and Paper Divisions —  
Thorold Sector, Registration Number  
0294496 (the "Plan")**;

**TO:** **Barbara Lewis**  
c/o Gordon H. Lewis  
Suite 601–222 Wellesley Street East  
Toronto ON M4X 1G4

**Applicant**

**AND TO:** **Donohue Forest Products Inc.**  
500 Sherbrooke Street West,  
Suite 800  
Montreal QU H3A 3C6

**Attention:** Mr. Philippe Keough,  
Benefits Coordinator

**Employer**

**NOTICE OF PROPOSAL**

**I PROPOSE TO REFUSE TO MAKE AN  
ORDER** under section 87(2)(a) and (c) of the Act  
requiring Donohue Forest Products Inc. (the  
"Employer") to comply with sections 37(3)(b)  
and 48(1) of the Act and the terms of the Plan in  
the calculation of the pre-retirement death bene-  
fits payable from the Plan to Barbara Lewis (the  
"Applicant") spouse of the late Harold Lewis.

**REASONS FOR THE REFUSAL:**

1. Sections 87(2)(a) and (c) of the Act allow  
the Superintendent to make an order if the  
Superintendent is of the opinion, upon rea-  
sonable and probable grounds that the Plan

or pension fund is not being administered  
in accordance with the Act, the regulations  
or the Plan, or that the Employer is contra-  
vening a requirement of the Act or the  
regulations.

2. The Plan is a contributory, defined benefit  
pension plan.
3. Harold Lewis was a member of the Plan at  
the time of his death on November 23,  
1997. At the time of his death, Mr. Lewis  
had credited service as defined in the Plan  
of approximately 30 years. Some of that  
credited service accrued prior to January 1,  
1987 and some of that credited service  
accrued after December 31, 1986.
4. The Applicant is the surviving spouse of  
Harold Lewis and his beneficiary under the  
Plan, and as such is entitled to a pre-retire-  
ment death benefit under section 48(1) of  
the Act.
5. The Employer has included in the calcula-  
tion of the value of the pre-retirement death  
benefit:
  - a.) the value of the contributions made to  
the Plan by Mr. Lewis prior to January 1,  
1987 (including interest); and
  - b.) the commuted value of Mr. Lewis'  
deferred pension, based on his credited  
service in the Plan after 1986, as  
required by the terms of section 6.1 of  
the Plan, as amended.
6. The Applicant has requested the  
Superintendent to issue an order requiring  
the Employer to also include in the calcula-  
tion of the value of the pre-retirement death  
benefit the commuted value of a deferred  
pension based on Mr. Lewis' credited service  
in the Plan prior to January 1, 1987.



7. The Applicant has submitted that Mr. Lewis' deferred pension was calculated according to an Amendment made to the Plan in Article 9. The Plan was amended by Amendment Number 1997-6 and Article 9 of that amendment repealed and replaced section 5.1 of the Plan text, effective May 1, 1993.
8. The Applicant has submitted that under section 37(3)(b) of the Act she would be entitled to a deferred pension equal to the pension benefit provided under any amendment made to the Plan after December 31, 1986. The Applicant has submitted that section 5.1 of the Plan was amended after December 31, 1986 and therefore the deferred pension should be calculated in accordance with section 5.1 of the Plan, which does not limit the calculation to benefits provided in respect of employment after December 31, 1986.
9. The Applicant's entitlement derives from section 6.1 of the Plan text, which provides a death benefit where a member dies before the commencement of his pension. Section 6.1 b)(2) provides that the Commuted Value of the benefits accrued to the member (excluding bridge benefits) **for Credited Service after 1986** is payable to the member's spouse, unless a waiver has been filed.
10. The formula for the calculation of the benefit derives from section 5.1 of the Plan, but the entitlement to the death benefit and the period for which the death benefit is calculated are set out in section 6.1 of the Plan. When section 5.1 was amended by Amendment Number 1997-6, it was not necessary to limit its application to service after 1986 in cases of pre-retirement death benefit calculations, because that limitation occurs in section 6.1, as detailed in paragraph 9 above.
11. Section 48(1) of the Act provides that if a member entitled to a deferred pension under section 37 dies before commencement of payment of the deferred pension, the person who is the spouse of the member on the date of death is entitled to receive a lump sum payment equal to the commuted value of the deferred pension, or to an immediate or deferred pension, the commuted value of which is at least equal to the commuted value of the deferred pension. Therefore the entitlement given by section 48 is limited to the deferred pension calculated under section 37 of the Act.
12. Section 37(3)(b) of the Act requires that the deferred pension include a pension benefit provided under any amendment made to the pension plan after December 31, 1986. In this case, two amendments were made to the Plan after December 31, 1986 and before the date of Mr. Lewis' death, which effected an increase in the pension benefits payable under the Plan. Those amendments occurred in the Revised and Restated Plan Text effective January 1, 1992 and in Amendment No. 1997-6 effective May 1, 1993. The Superintendent is satisfied that the calculation of the commuted value of Mr. Lewis' deferred pension included the increase in pension benefits for Mr. Lewis' entire period of credited service under the Plan, as required by these two amendments and by section 37(3)(b) of the Act.
13. The Applicant has asked for a declaration, in the alternative, that "the Actual Calculation and the Purported Calculation are invalid, that the pension benefit provided...under the pension plan in respect of employment





...after...the 31<sup>st</sup> day of December, 1986" as required by paragraph 37(3)(a) of the PBA does have an independent meaning and as such can be calculated and that the "benefit provided under any post reform amendment" cannot be negative." There is no authority under the *Act* for the Superintendent to make such a declaratory order.

14. For the reasons set out above, the Applicant has not demonstrated that the Employer has not complied with the requirements of the Plan and sections 37(3)(b) and 48(1) of the *Act* in calculating the pre-retirement death benefit to which the Applicant is entitled.

15. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the Tribunal) pursuant to section 89(6) of the *Act*. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>

**YOUR WRITTEN NOTICE** must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

<sup>1</sup>NOTE — PURSUANT to section 112 of the *Act* any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO MAKE THE ORDER REQUESTED, AS PROPOSED IN THIS NOTICE.**

**DATED** at North York, Ontario, November 8, 2002.

K. David Gordon  
Deputy Superintendent, Pensions  
By delegated authority



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8 as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services, under  
section 89(5) of the Act, to Refuse to Make an  
Order pursuant to section 69 of the Act,  
Respecting the **Pension Plan for Salaried  
Employees of Bestfoods Canada Inc.,  
Registration No. 240358;**

**TO:** **Mr. Gerry O'Connor**  
54 Pennycross Court  
Woodbridge, ON  
L4L 3M6

**Applicant**

**AND TO:** **Mr. Roberto Tomassini**  
Koskie Minsky  
20 Queen Street West  
Suite 900, Box 52  
Toronto, ON  
M5H 3R3

**Counsel for the Applicant**

**AND TO:** **Unilever Canada**  
160 Bloor Street East, Suite 1500  
Toronto, Ontario  
M4W 3R2

**Attention:** Mr. Tom Prychitka  
Director of Pensions  
**Administrator**

**NOTICE OF PROPOSAL**

**I PROPOSE TO REFUSE TO MAKE AN  
ORDER** under section 69 of the Act that the  
Pension Plan for Salaried Employees of  
Bestfoods Canada Inc., Registration No. 240358  
(the "Plan") be wound up in part pursuant to  
section 69(1) of the Act.

**REASONS FOR THE PROPOSAL TO  
REFUSE:**

1. The Plan is a defined benefit pension plan established by the Canada Starch Operating Company Inc. ("Canada Starch"). In 1998, Canada Starch changed its name to Bestfoods Inc. and in 1999 to Bestfoods Canada Inc. Subsequently, Unilever Canada acquired Bestfoods Canada Inc. and Unilever Canada became the administrator of the Plan.
2. Mr. Gerry O'Connor was employed by Canada Starch from July 1987 to August 1997. He is a former member and beneficiary of the Plan, and he requests the Superintendent to order a partial wind up of the Plan in connection with his termination.
3. Canada Starch employees, including Mr. O'Connor, provided corporate services to a corn products business and a food products business operated by Canada Starch.
4. In December 1997, Canada Starch transferred the corn products business (the "corn products spin off") to a separate and newly established company called Canada Starch Operating Company (1998) Inc. ("Casco 1998"). At the time of the corn products spin off, Canada Starch employees, including those who provided corporate services to the corn products and food products businesses, were, with the exception of Mr. O'Connor, offered either positions with Casco 1998 or continued employment with Canada Starch. The employment of those former employees of Canada Starch who were offered employment by Casco 1998 is deemed not to be terminated by reason of the corn products spin off by virtue of subsection 80(3) of the PBA. Thus, only

Mr. O'Connor ceased to be employed as a result of the corn products spin off.

5. Clause 69(1)(d) of the Act states that the Superintendent may require the wind up of a pension plan in whole or in part if "a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer."
6. The corn products spin off does not give rise to grounds for a wind up under clause 69(1)(d) because a significant number of members did not cease to be employed as a result of the corn products spin off.
7. Moreover, there is insufficient evidence to conclude that a larger reorganization within the meaning of clause 69(1)(d) occurred over the period 1990 to 1998 as claimed by Mr. O'Connor.
8. Therefore, there are no grounds for ordering a partial wind up of the Plan under clause 69(1)(d) of the Act.
9. Section 69(1)(e) of the Act states that the Superintendent may require the wind up of a pension plan in whole or in part if "all or a significant portion of the business carried on by the employer at a specific location is discontinued."
10. Mr. O'Connor alleges that at the time of the corn products spin-off, Canada Starch's function of providing corporate services to the food and corn products businesses ended, leading to the closure of the

Etobicoke office where Mr. O'Connor was employed. However, Canada Starch (under its new names Bestfoods Inc. and Bestfoods Canada Inc.) continued to operate offices at the Etobicoke location well after Mr. O'Connor's departure where individuals performing functions similar to those performed by Mr. O'Connor were employed.

11. Therefore, there was no discontinuance of all or a significant portion of the business carried on by the employer at the location where Mr. O'Connor was employed, and there are no grounds for ordering a partial wind up under clause 69(1)(e) of the Act.
12. Such and further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>

**YOUR WRITTEN NOTICE** must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.





**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO MAKE THE ORDER PROPOSED IN THIS NOTICE.**

**DATED** at Toronto, Ontario, February 25, 2003.

K. David Gordon  
Deputy Superintendent, Pensions



## Notices of Proposal to Refuse to Consent to an Application

**IN THE MATTER OF** the *Pension Benefits Act*  
R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** an Application  
under ss. 78(1) of the Act submitted by  
Marks & Spencer Canada Inc. in respect of  
the **Retirement Income Plan for  
Employees of Marks & Spencer Canada  
Inc., Registration Number 387241  
(the "Plan")**;

**TO:** **Marks & Spencer Canada Inc.**  
c/o Baker & McKenzie  
Barristers & Solicitors  
BCE Place, 181 Bay Street,  
Suite 2100  
P.O. Box 874  
Toronto ON M5J 2T3

**Attention:** Mrs. Susan G. Seller  
**Employer and Administrator  
of the Plan**

**AND TO:** **CAW Local 1000 of  
National Automobile,  
Aerospace, Transportation  
and General Workers Union  
of Canada (also known as  
Retail Wholesale Canada —  
CAW Division)**  
6800 Campobello Road  
Mississauga ON L5N 2L8

**Attention:** Mr. Mike Langdon  
**Union**

### **NOTICE OF PROPOSAL TO REFUSE TO CONSENT TO APPLICATION**

**I PROPOSE TO REFUSE TO CONSENT** to  
the application dated March 30, 2001, submit-  
ted by Marks & Spencer Canada Inc., for the  
payment of surplus on the windup of the Plan  
to the Employer under subsection 78(1) of  
the Act.

### **REASONS FOR PROPOSED REFUSAL:**

1. The Plan was established as a result of the consolidation of several pension plans in 1976, including:
  - a. the Pension Plan for Non-Bargaining Unit Salaried Employees of Smith's of Windsor Limited, dated August 1974 (the "Prior Smith Non-Bargaining Plan");
  - b. the Pension Plan for Walker Stores Limited as amended to August 1, 1974 (the "Prior Walker Plan"); and
  - c. the D'Allaird Manufacturing Co. Limited Pension Plan, effective October 1, 1974 (the "Prior D'Allaird Plan").
2. In 1984, the Non Contributory Pension and Retirement Plan for Bargaining Unit Employees of Smiths of Windsor (the "Smith Bargaining Plan") was merged into and included as a Prior Plan in the Plan.

### **PRIOR SMITH NON-BARGAINING PLAN**

3. The Prior Smith Non-Bargaining Plan was created with an effective date of February 1, 1963. It was funded through a trust agreement with the Royal Trust Company Limited, which the Applicant has not produced. The original plan document evidenced an intention by the employer to create a trust, by identifying the trustee and the beneficiaries and by providing that all contributions would be paid into a trust fund and that all benefits would be paid from the trust fund. The plan document indicated that the trust fund would be administered by the trustee in accordance with the terms of the trust agreement. Although the trust agreement has not been produced, there is sufficient certainty to establish that a trust was created in 1963.



4. The trust agreement has not been produced and there is no other evidence that the employer was a beneficiary of the trust or that the employer reserved a power to revoke the trust.
  5. The Prior Smith Non-Bargaining Plan provided that on discontinuance of the plan, "the Company cannot recover any sums paid to the date thereof and all the assets held pursuant to or for the purposes of the Plan must and shall be applied for the benefit of the Members, retired Members and their respective beneficiaries, estates and joint annuitants in such equitable manner as shall be determined by the Company in consultation with the Actuary."
  6. Therefore the Prior Smith Non-Bargaining Plan did not provide for the payment of surplus to the employer on the wind up of the plan, and any subsequent amendments could not do so as no power to revoke the trust for the benefit of the members of the plan had been reserved.
- ing that all contributions would be paid into a trust fund and that all benefits would be paid from the trust fund. The plan document indicated that the trust fund would be administered by the trustee in accordance with the terms of the trust agreement. Although the trust agreement has not been produced, there is sufficient certainty to establish that a trust was created in 1960.
10. The trust agreement has not been produced and there is no other evidence that the employer was a beneficiary of the trust or that the employer reserved a power to revoke the trust.
  11. The Prior Walker Plan provided that "in the event of discontinuance of the Plan, in whole or in part, the Company cannot recover any sums paid to the date thereof and all the assets held pursuant to or for the purposes of the Plan must and shall be applied for the benefit of the members, retired members and their respective beneficiaries, estates and joint annuitants in such equitable manner as shall be determined by the Company in consultation with the Actuary."
  12. Therefore the Prior Walker Plan did not provide for the payment of surplus to the employer on the wind up of the plan, and any subsequent amendments could not do so as no power to revoke the trust for the benefit of the members of the plan had been reserved.

#### **PRIOR WALKER PLAN**

7. The Prior Walker Plan was known as the Pension Plan for Gordon MacKay and Company Limited and Designated Subsidiary Companies when it was created in 1960 by the merger of two prior plans.
8. The recitals in the Prior Walker Plan refer to plans established in 1945 and 1949, but all documentation for the two prior plans is missing.
9. The Prior Walker Plan was funded through a trust agreement with the Royal Trust Company Limited, which the Applicant has not produced. Part I of the original plan document evidenced an intention by the employer to create a trust, by identifying the trustee and the beneficiaries and by provid-

#### **PRIOR D'ALLAIRD PLAN**

13. The Prior D'Allaird Plan was created in 1956 and provided for a trust fund to be administered by a trustee in accordance with a trust agreement. The employer reserved a right to modify or discontinue the plan and specified the manner in which the Pension Trust





Fund was to be distributed on termination. Subsection 18(E) provided that "If the remaining assets are more than adequate to meet the full requirements of each class such assets shall be allocated equitably to all Members."

14. The Prior D'Allaird Plan was funded through a trust agreement with the Royal Trust Company, which is included with the Application. The agreement provided that if the Plan is terminated, the trustee will dispose of the Fund in accordance with the written order of the Committee.
15. The Prior D'Allaird Plan was subject to a trust in favour of the members, the employer was not a beneficiary of the trust and the employer did not reserve a power to revoke that trust.
16. Therefore the Prior D'Allaird Plan did not provide for the payment of surplus to the employer on the wind up of the plan and any subsequent amendment could not do so as no power to revoke the trust for the benefit of the members had been reserved.

### **SMITH BARGAINING PLAN**

17. The Smith Bargaining Plan was created in 1963, and the application does not disclose that this plan was subject to a trust. The funding documents for the 1963 plan have not been produced by the Applicant.
18. However, section 10.3 of the 1963 plan text provided that the Company shall have no right title or interest in the contributions made by it to the Fund and no part of the Fund shall revert to the Company. Termination of the plan was contemplated

in section 12 and section 12.3 provided that, if after provision of all benefits was made, assets shall remain in the fund, "such assets shall be allocated on a pro rata basis."

Section 12.3 when read together with section 10.3 means that the employer was not entitled to surplus on the termination of the Smith Bargaining Plan.

19. The Smith Bargaining Plan did not contain a power to amend the plan.
20. Therefore the Smith Bargaining Plan did not provide for the payment of surplus to the employer on the wind up of the plan, and there was no power to amend the plan to provide otherwise.
21. The Employer has therefore not demonstrated that it has complied with section 79(3)(b) of the Act which requires that the pension plan provide for payment of surplus to the employer on wind up of the Plan.
22. Such further and other grounds as may come to my attention.

### **YOU ARE ENTITLED TO A HEARING**

before the Financial Services Tribunal of Ontario (the "Tribunal") pursuant to subsection 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>

**YOUR WRITTEN NOTICE** must be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

<sup>1</sup>PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, or toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO CONSENT TO THIS APPLICATION, AS PROPOSED IN THIS NOTICE OF PROPOSAL.**

**DATED** at Toronto, Ontario, this 18th day of November, 2002.

K. David Gordon  
Deputy Superintendent, Pensions



## Orders that Pension Plans be Wound Up

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the PBA relating to the **Employee Retirement Plan for the Employees of Piccione Machine Tool & Gear Mfg., Registration Number 582080 (the "Plan")**;

**TO:** **London Life Insurance Company**  
Group Retirement Services  
255 Dufferin Avenue  
London ON N6A 4K1

**Attention:** Ms. Darlene Sundercock  
**Administrator**

**AND TO:** **Piccione Machine Tool & Gear Mfg.**  
32 Upton Road  
Scarborough ON M1L 2B8

**Attention:** Ms. Lynda Piccione  
**Employer**

### ORDER

**ON** the 25th day of October, 2002, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order (the "Notice of Proposal") to the Employer and to the Administrator of the Plan, pursuant to subsection 69(1) of the Act, that the Employee Retirement Plan for the Employees of Piccione Machine Tool & Gear Mfg., Registration Number 582080, be wholly wound up effective May 31, 2001.

**NO REQUEST** for a hearing has been received by the Financial Services Tribunal in connection with this matter.

**IT IS THEREFORE ORDERED** that the Employee Retirement Plan for the Employees of Piccione Machine Tool & Gear Mfg., Registration Number 582080 (the "Plan"), be wholly wound up effective May 31, 2001.

### **REASONS:**

1. There was a failure of the employer to make contributions to the pension fund as required by the Act or the regulations, pursuant to clause 69(1)(b) of the PBA.
2. All or significant portion of the business carried on by the employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the PBA.

**DATED** at North York, Ontario, this 20th day of December, 2002.

Tom Golfetto  
Director, Pension Plans Branch  
By Delegated Authority from the  
Superintendent of Financial Services





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Contributory Pension Plan for Salaried Employees of McMaster University Including McMaster Divinity College 2000, Registration No. 1079920**;

**TO:** **McMaster University**  
1280 Main Street West  
Gilmour Hall — 202  
Hamilton, Ontario  
L8S 4K1

**Attention:** Karen Belaire  
Vice-President Administration  
**Applicant and Employer**

### **ORDER**

**ON** September 30, 2002, the Superintendent of Financial Services caused to be served on McMaster University an Amended Notice of Proposal dated September 27, 2002, proposing to make an Order under subsection 78(1) of the Act consenting to the application by McMaster University for payment out of the Contributory Pension Plan for Salaried Employees of McMaster University Including McMaster Divinity College 2000, Registration No. 1079920 (the "Plan") to McMaster University in the amount of 50 per cent of Distributable Surplus adjusted in accordance with paragraphs (A), (B), and (C) of section 1(a)(viii) of the Surplus Sharing Settlement Agreement dated May 31, 2001 in respect of the Plan and filed with the Superintendent of Financial Services of Ontario by McMaster University (the "Agreement"). Such

Distributable Surplus was estimated to be \$152,842,041 as at July 1, 2000.

**A REQUEST FOR HEARING** dated October 22, 2002 was filed by a member of the Plan and was received by the Financial Services Tribunal (the "Tribunal") on October 23, 2002.

**ON** December 24, 2002, the hearing request was withdrawn.

**ON** January 6, 2003, the Tribunal confirmed that the Tribunal's file was closed.

**NO OTHER** Requests for Hearing have been filed with the Tribunal within the time set out in subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Contributory Pension Plan for Salaried Employees of McMaster University Including McMaster Divinity College 2000, Registration No. 1079920, to McMaster University in the amount of 50 per cent of the Distributable Surplus. The actual Distributable Surplus was \$149,837,926 as at July 1, 2000 and shall be further adjusted from July 1, 2000 in accordance with paragraphs (B) and (C) of subsection 1(a)(viii) of the Agreement. The University Portion, as defined in the Agreement, shall be paid to McMaster University as soon as practicable after individual shares of the Member Portion, as defined in the Agreement, are paid or applied for the benefit of the members of the Surplus Sharing Group in the manner more particularly described in the Agreement.

**DATED** at Toronto, Ontario, this 14th day of January, 2003.

Tom Golfetto  
Director, Pension Plans Branch  
by delegated authority from the Superintendent of Financial Services of Ontario



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "PBA");

**AND IN THE MATTER OF** a Proposal of  
the Superintendent of Financial Services to  
Make an Order under section 69 of the PBA  
relating to the **Pension Plan for the  
Hourly Employees of Magnatek Polygon  
Transformer Co., a division of Magnatek  
National Electric Coil Limited,**  
**Registration Number 996942;**

**TO:** **Aon Consulting**  
Suite 500  
145 Wellington Street West  
Toronto ON M5J 1H8

**Attention:** Mr. Brad Duce  
**Administrator**

**AND TO:** **National Electric Coil  
(Polygon Transformer)**  
50 Northline Road  
North York ON M4B 3E2

**Attention:** Mr. Jim Gray  
General Manager  
**Employer**

**AND TO:** **Canadian Union of  
Operating Engineers &  
General Workers**  
2087 Dundas Street East, Unit 103  
Mississauga ON L4X 2V7

**Attention:** Mr. Grgar Zoran  
**Union Representative  
Canadian Union of Operating  
Engineers & General Workers**

**AND TO:** **Doane Raymond Limited**  
P.O. Box 55  
Royal Bank Plaza, Suite 1100,  
North Tower  
Toronto ON M5J 2P9

**Attention:** Mr. Ray Godbold

**Trustee in Bankruptcy of  
Polygon Transformer Inc.**

### **ORDER**

**ON** November 12, 2002, the Deputy Superin-  
tendent, Pensions, issued a Notice of Proposal  
to Make an Order pursuant to subsection 69(1)  
of the Act, that the Pension Plan for the Hourly  
Employees of Magnatek Polygon Transformer  
Co., a division of Magnatek National Electric  
Coil Limited, Registration Number 996942, be  
wound up in whole effective December 31, 1993.

**NO REQUEST** for a hearing has been received  
by the Financial Services Tribunal in connection  
with this matter.

**IT IS THEREFORE ORDERED** that the  
Pension Plan for the Hourly Employees of  
Magnatek Polygon Transformer Co., a division  
of Magnatek National Electric Coil Limited,  
Registration Number 996942 (the "Plan"), be  
wound up in whole effective December 31, 1993.

### **REASONS:**

1. There was a cessation or suspension of  
employer contributions to the Plan, pur-  
suant to clause 69(1)(a) of the PBA.
2. There was a failure of the employer to make  
contributions to the Plan as required by the  
Act or the regulations, pursuant to clause  
69(1)(b) of the PBA.

**DATED** at North York, Ontario, this 20th day  
of January, 2003.

Tom Golfetto  
Director, Pension Plans Branch



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a proposal by the Superintendent of Financial Services to Make an Order under section 87 of the Act respecting the **Retirement Plan for Employees of Dustbane Enterprises Limited, Registration Number 229419 (the "Plan")**;

**TO:** **Dustbane Enterprises Limited**  
25 Pickering Place  
Ottawa, Ontario  
K1G 5P4

**Attention:** John M. French  
President

**Employer and Administrator  
of the Plan**

## **ORDER**

**ON OR ABOUT** December 21, 1999, the Superintendent of Financial Services (erroneously described as the Superintendent of Financial Institutions) signed a Notice of Proposal to Make an Order against Dustbane Enterprises Limited ("Dustbane"), proposing to order Dustbane to pay into the pension fund for the Plan an amount equal to the total of all payments that, under the Act, the regulations and the Plan, are due or that have accrued and have not been paid into the pension fund as at June 1, 1990, plus interest to the date of payment, such payment to be paid within sixty (60) days from the date of the Proposed Order.

**ON** January 26, 2000, Dustbane requested a hearing before the Financial Services Tribunal (the "Tribunal") under section 89 of the Act.

**ON** April 14, 2000 and June 2, 2000, the Tribunal conducted a pre-hearing conference.

**ON** June 21, 2000, the Tribunal heard a motion brought by Dustbane seeking to compel the Superintendent to answer certain Interrogatories.

**ON** July 10, 2000, the Tribunal conducted a settlement conference. The proceeding did not settle.

**ON** July 18, 2000, the Tribunal issued a decision compelling the Superintendent to answer the Interrogatories that were the subject of the motion on June 21, 2000.

**ON** October 3, 4, 5, and 16, 2000, the Tribunal conducted the hearing.

**ON** February 15, 2001, the Tribunal issued its decision. The majority decision directed the Superintendent to carry out the proposal contained in the Notice of Proposal. One member of the Tribunal panel dissented.

**ON** March 16, 2001, Dustbane filed a Notice of Appeal respecting the Tribunal decision with the Divisional Court.

**ON** June 7, 2002, the Divisional Court heard and dismissed the appeal.

**NO MOTION FOR LEAVE TO APPEAL** the Divisional Court's decision has been filed with the Court of Appeal.

## **IT IS THEREFORE ORDERED THAT**

Dustbane Enterprises Limited pay into the pension fund for the Retirement Plan for Employees of Dustbane Enterprises Limited an amount equal to \$347,900.00, being the total of all payments that, under the Act, the regulations and the Plan, are due or that have accrued and have not been paid into the pension fund as at December 31, 2000, plus interest to the date of payment. Such payment is to be made by February 28, 2003.

## **REASONS:**

1. The Plan is a plan that is registered under the Act as registration number 229419.





2. Dustbane Enterprises Limited is the employer pursuant to the definition of "employer" in the Act.
3. Dustbane Enterprises Limited ("Dustbane") partially wound up the Plan effective June 1, 1990.
4. A partial wind up report was filed with the Pension Commission of Ontario (now the Financial Services Commission of Ontario) on October 4, 1991.
5. The partial wind up report discloses a deficit in the pension fund for the Plan as at June 1, 1990.
6. The actuarial valuation filed by Dustbane's actuaries with the Superintendent of Financial Services on November 1, 2002, states that as at December 31, 2000, the deficit for that part of the Plan that was partially wound up effective June 1, 1990, was in the amount of \$347,900.00.
7. Under subsection 75(1)(a) of the Act, when a pension plan is wound up in whole or in part, the employer shall pay into the pension fund an amount equal to the total of all payments that, under this Act, the regulations and the pension plan, are due or that have accrued and that have not been paid into the pension fund.
8. Under subsection 87(2)(c) of the Act, the Superintendent may by written order require an administrator or any other person to take any action in respect of a pension fund if the Superintendent is of the opinion, upon reasonable and probable grounds, that the employer is contravening a requirement of the Act or the regulations.

**DATED** at North York, Ontario, this 11th day of February, 2003.

K. David Gordon  
Deputy Superintendent, Pensions





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting **The Pension Plan for OSF Inc., Registration Number 594366 (the "Pension Plan")**;

**TO:**           **The Manufacturers Life Insurance Company**  
Canadian Pension Operations  
500 King North, P.O. Box 1602  
Waterloo ON N2J 4C6

**Attention:** Ms. Yolanda Pingos  
**Administrator of the Pension Plan**

**AND TO:**   **OSF Inc.**  
5145 Steeles Avenue West  
Weston ON M9L 1R5

**Attention:** Ms. Luann Izzett  
**Employer**

**AND TO:**   **Pollard & Associates Inc.**  
27 Major Mackenzie Drive East,  
Suite 201  
Richmond Hill ON L4C 1G6  
**Trustee in Bankruptcy for OSF Inc.**

## **ORDER**

**ON** or about the 20th day of December, 2002, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order to the Employer and to the Administrator of the Pension Plan, pursuant to subsection 69(1) of the Act, that The Pension Plan for OSF Inc., Registration Number 594366, be wholly wound up effective April 16, 2002.

**NO REQUEST** for a hearing has been received by the Financial Services Tribunal in connection with this matter.

**IT IS THEREFORE ORDERED** that The Pension Plan for OSF Inc., Registration Number 594366, be wholly wound up effective April 16, 2002.

## **REASONS:**

1. The employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act* (Canada), pursuant to clause 69(1)(c) of the Act; and
2. A significant portion of the business carried on by the employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.

**DATED** at Toronto, Ontario, this 24th day of February, 2003.

Tom Golfetto  
Director, Pension Plans Branch  
By Delegated Authority from the  
Superintendent of Financial Services



## Consents to Payments of Surplus out of Wound up Pension Plans

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Staff Pension Plan for Employees of Furmanite Canada Ltd., Registration No. 428557;**

**TO:** **Furmanite Canada Ltd.**  
862 Upper Canada Drive, Unit 9  
Sarnia ON N7T 7H3

**Attention:** Mr. Dan Stitt  
President

**Applicant and Employer**

### CONSENT

**ON** or about September 12, 2002, the Superintendent of Financial Services caused to be served on Furmanite Canada Ltd. a Notice of Proposal dated September 11, 2002, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Staff Pension Plan for Employees of Furmanite Canada Ltd., Registration No. 428557, to Furmanite Canada Ltd. in the amount of \$88,330 as at September 30, 1997 plus investment earnings and other adjustments thereon to the date of payment.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Staff Pension Plan for Employees of Furmanite Canada Ltd., Registration No. 428557, of \$88,330 as at September 30, 1997 plus investment earnings and other adjustments thereon to the date of payment, to Furmanite Canada Ltd.

### **THIS CONSENT IS EFFECTIVE ONLY**

**AFTER** the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement made by the Applicant and the members, former members and other persons entitled to payments from the fund) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

**DATED** at Toronto, Ontario, this 29th day of October, 2002.

Tom Golfetto  
Director, Pension Plans Branch  
by delegated authority from the Superintendent of Financial Services

Copy: Marian McKillop,  
Corporate Benefit Analysts, Inc.





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Eaton Superannuation Plan for Designated Employees, Registration No. 0593673**;

**TO:** **Richter and Partners Inc.**  
c/o Fasken Martineau DuMoulin  
LLP  
66 Wellington Street West  
Suite 4200, Toronto Dominion  
Bank Tower  
Box 20, Toronto Dominion Centre  
Toronto ON M5K 1N6

**Attention:** Brent K. Duguid

**The Applicant**

### CONSENT

**ON** or about September 23, 2002, the Superintendent of Financial Services caused to be served on Richter and Partners Inc., Liquidator of Distributionco Inc., a Notice of Proposal dated September 20, 2002, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Eaton Superannuation Plan for Designated Employees, Registration No. 0593673 (the "Plan"), to Richter and Partners Inc., Liquidator of Distributionco Inc. in the amount of \$354,700 as at December 31, 2001 plus investment earnings thereon to the date of payment, and adjusted for actual expenses incurred in connection with this Application.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Eaton Superannuation Plan for Designated Employees, Registration No. 0593673, of \$354,700 to Richter and Partners Inc., Liquidator of Distributionco Inc.

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Applicant satisfies me that the payment of the members' share of the negotiated share of the surplus has been made.

**DATED** at Toronto, Ontario, this 12th day of November, 2002.

Tom Golfetto  
Director, Pension Plans Branch  
by delegated authority from the Superintendent of Financial Services

cc: Paul Macphail, PricewaterhouseCoopers Inc.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act consenting to a payment out of **Dry-Ac Ltd. Executive Pension Plan, Registration No. 987057**;

**TO:** **Dry-Ac Ltd.**  
98 Daffodil Crescent  
Ancaster ON L9K 1E2

**Attention:** Eugene Campbell  
President & Secretary

**Applicant and Employer**

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the applicant satisfies me that a provision has been made for the payment of liabilities of the pension plan as calculated for purposes of termination of the pension plan.

**DATED** at Toronto, Ontario, this 14th day of November, 2002.

Tom Golfetto  
Director, Pension Plans Branch  
by delegated authority from the Superintendent of Financial Services

c.c. Jean Robichaud,  
The Standard Life Assurance Company

### CONSENT

**ON** August 15, 2002, the Superintendent of Financial Services caused to be served on Dry-Ac Ltd. a Notice of Proposal dated August 14, 2002, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Dry-Ac Ltd. Executive Pension Plan, Registration No. 987057 (the "Plan"), to Dry-Ac Ltd. in the amount of \$92,800 as at February 1, 2001 plus earnings there on to the date of payment.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of Dry-Ac Ltd. Executive Pension Plan, Registration No. 987057, of \$92,800 as at February 1, 2001 plus interest at the fund rate of return thereon to the date of payment, to Dry-Ac Ltd.





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act consenting to a payment out of the **AFG Industries Ltd. Salaried Pension Plan, Registration No. 1070853;**

**TO:** **AFG Industries Ltd.**  
1400 Lincoln Street  
Kingsport TN 37660  
U.S.A.

**Attention:** Mr. Steven E. Kramer  
Vice President,  
Human Resources and  
General Counsel  
**Applicant and Employer**

**THE SUPERINTENDENT OF FINANCIAL SERVICES, THEREFORE, CONSENTS** to the payment out of the AFG Industries Ltd. Salaried Pension Plan, Registration No. 1070853, of \$14,303,441, to AFG Industries Ltd.

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Applicant satisfies me that all the consenting members and former members' entitlements from the plan have first been transferred out and paid to the members or otherwise provided for.

**DATED** at Toronto, Ontario, this 10th day of December, 2002.

Tom Golfetto  
Director, Pension Plans Branch  
by delegated authority from the Superintendent of Financial Services

c.c. Audrey Mak, Fraser Milner Casgrain  
Mark Zigler, Koskie Minsky

### CONSENT

**ON** or about August 8, 2002, the Superintendent of Financial Services caused to be served on AFG Industries Ltd., a Notice of Proposal dated August 2, 2002 to consent, pursuant to subsection 78(4) of the Act, to payment out of the AFG Industries Ltd. Salaried Pension Plan, Registration No. 1070853 (the "Plan"), to AFG Industries Ltd. in the amount of \$14,303,441 as at January 10, 2001, plus earnings thereon to the date of payment.

A request for hearing was received. However, it was withdrawn on November 22, 2002 and the Financial Services Tribunal has closed its file. No other Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Employees of The Wool Bureau of Canada Limited, Registration No. 0314187**;

**TO:** **Woolmark Americas, Ltd.**  
7 Purdue Road  
Edison, New Jersey  
USA 08820

**Attention:** John McGowan, President  
**Applicant, Employer and  
Administrator of the Plan**

### CONSENT

**ON** or about October 9th, 2002, the Superintendent of Financial Services caused to be served on Woolmark Americas, Ltd. a Notice of Proposal dated October 8, 2002, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Pension Plan for Employees of The Wool Bureau of Canada Limited, Registration No.0314187, to Woolmark Americas, Ltd. of the Net Company Surplus, as defined therein.

**NO NOTICE** requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Pension Plan for Employees of The Wool Bureau of Canada Limited, Registration No. 0314187 (the "Plan"), of the Net Company Surplus to Woolmark Americas,

Ltd. (the "Applicant"). Net Company Surplus means 50% of the Surplus less the reasonable legal fees, disbursements and taxes charged to the Applicant after January 1, 1999 in respect of the wind up of the Plan and the distribution of Surplus. Surplus means the surplus in the Plan, plus investment earnings thereon, after deducting actuarial expenses in connection with the wind up of the Plan including the distribution of surplus, but prior to deducting the reasonable legal fees, disbursements and taxes charged to the Applicant after January 1, 1999, in respect of the wind up of the Plan and the distribution of Surplus and the reasonable legal fees, disbursements and taxes charged for services to the Members after January 1, 2000, in respect of the distribution of Surplus.

### **THIS CONSENT IS EFFECTIVE ONLY**

**AFTER** the Applicant satisfies me that the payment of the Members' share of the negotiated surplus has been made.

**DATED** at Toronto, Ontario, this 10th day of December, 2002.

Tom Golfetto  
Director, Pension Plans Branch  
by delegated authority from the Superintendent  
of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act consenting to a payment out of the **Maple Leaf Foods Inc. Employees Retirement Plan 100, Registration No. 0303180;**

**TO:** **Maple Leaf Foods Inc.**

150 Bartor Road  
Weston ON M9M 1H1

**Attention:** Mr. Jim Pickering  
Director, Pensions & Benefits  
**Applicant and Employer**

### CONSENT

**ON** or about November 15, 2002, the Superintendent of Financial Services caused to be served on Maple Leaf Foods Inc. a Notice of Proposal dated November 15, 2002 to consent, pursuant to subsection 78(1) of the Act, to payment out of the Maple Leaf Foods Inc. Employees Retirement Plan 100, Registration No. 0303180 (The "Plan"), to Maple Leaf Foods Inc. in the amount of \$29,024,817 as at December 31, 2001 adjusted for actual expenses plus investment earnings thereon to the date of payment.

A Notice requesting a hearing was delivered to the Financial Services Tribunal within the time prescribed by subsection 89(6) of the Act, however, this request was subsequently withdrawn by notice delivered to the Registrar on December 23, 2002. There was no other Notice requiring a hearing delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Maple Leaf Foods Inc. Employees Retirement Plan 100, Registration No. 0303180, of \$29,024,817 as at December 31, 2001 adjusted for actual expenses plus investment earnings thereon to the date of payment, to Maple Leaf Foods Inc.

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Applicant satisfies me that all benefits, benefit enhancements (including benefit enhancements pursuant to the Surplus Sharing Agreement made by the Applicant and the affected members and former members) and any other payments which members, former members and any other persons entitled to such payments have been paid, purchased, or otherwise provided for and satisfies me that all requirements of the *Quebec Supplemental Pension Plans Act* R.S.Q. 1990, R-15.1, as amended have been met.

**DATED** at Toronto, Ontario, this 30th day of December, 2002.

Tom Golfetto

Director, Pension Plans Branch  
by delegated authority from the Superintendent of Financial Services

Copy: Randy Bauslaugh, Blake, Blake, Cassels & Graydon LLP  
Michael Millns, Towers Perrin  
John Evans, Evans Law Firm  
Paul Fox, Fox, Clarke, Dollak  
David Brown, Eckler Partners Ltd.  
Mark Faiz Faiz & Associates Inc.  
Catherine Anderson, Blake, Cassels & Graydon  
Anthony Cooper,  
Anthony Cooper Actuarial Services



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act consenting to a payment out of the **BASF Pension Plan for Canadian Management Represented Employees, Registration No. 556613**;

**TO:** **BASF Canada**  
345 Carlingview Drive  
Toronto ON M9W 6N9

**Attention:** Mr. Peter Sinclair

### **CONSENT**

**ON** or about December 17, 2002, the Superintendent of Financial Services caused to be served on BASF Canada a Notice of Proposal dated December 10, 2002 to consent, pursuant to subsection 78(4) of the Act, to payment out of the BASF Pension Plan for Canadian Management Represented Employees, Registration No. 556613, to BASF Canada in the amount of \$219,018.62 as at September 30, 2001 plus interest, at the fund rate of return thereon, to the date of payment.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the BASF Pension Plan for Canadian Management Represented Employees, Registration No. 556613, of \$219,018.62 as at September 30, 2001 plus interest, at the fund rate of return thereon, to the date of payment, to BASF Canada.

**DATED** at Toronto, Ontario, this 7th day of February, 2003.

Tom Golfetto  
Director, Pension Plans Branch  
by delegated authority from the Superintendent of Financial Services

cc: Ms. Ofelia Isabel, Towers Perrin

Penny McIlraith, FSCO,  
Pension Plans Branch







## **Declaration that the Pension Benefits Guarantee Fund Applies to Pension Plans — Subsection 83(1) of the PBA**

**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P. 8, as amended (the “PBA”);

**AND IN THE MATTER OF** a Proposal by  
the Superintendent of Financial Services to  
Make a Declaration under Section 83 of the  
PBA respecting the **The Algoma Steel Inc.  
Salaried Employees Pension Plan for  
Employees in Canada, Registration  
Number 0335810;**

**TO:** **Morneau Sobeco**  
Deloitte & Touche Inc.  
1500 Don Mills Road  
Toronto ON M3B 3K4

**Attention:** Mr. Al Kiel  
Partner  
**Administrator of The Algoma  
Steel Inc. Salaried Employees  
Pension Plan for Employees  
in Canada**

**AND TO:** **Algoma Steel Inc.**  
105 West Street  
Sault Ste. Marie ON P6A 7B4

**Attention:** Mr. Paul C. Finley  
General Counsel and Corporate  
Secretary  
**Employer**

**AND TO:** **The United Steelworkers  
of America**  
c/o Days Inn, 320 Bay Street,  
Room 15  
Sault Ste. Marie ON P6A 1X1

**Attention:** Mr. Ian Kersley  
President, Local Union 2724  
**Union**

### **DECLARATION**

#### **WHEREAS:**

1. The Algoma Steel Inc. Salaried Employees Pension Plan for Employees in Canada, Registration No. 0335810 (the “Pension Plan”), is registered under the PBA;
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the “Guarantee Fund”) by the PBA or the regulations made thereunder;
3. Algoma Steel Inc. (Algoma) instituted proceedings under the Companies’ Creditors Arrangement Act, and its Plan of Reorganization was approved by its creditors and sanctioned by the court on December 19, 2001;
4. The Pension Plan was terminated effective September 17, 2001 by Algoma Steel Inc. in accordance with section 68 of the PBA;
5. The Superintendent of Financial Services appointed Morneau Sobeco as administrator (the “Administrator”) of the Pension Plan on September 6, 2002;
6. On October 22, 2002, the Deputy Superintendent, Pensions issued a Notice of Proposal dated October 11, 2002 to Make a Declaration that the Guarantee Fund applies to the Pension Plan; and
7. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received.

**NOW THEREFORE TAKE NOTICE** I declare pursuant to sections 83 and 89 of the Act, that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Report on the Plan Wind Up and Pension Benefits Guarantee Fund Application as at September 17, 2001, indi-



cates an estimated funding deficiency of \$79,977,000 and an estimated funded ratio of 75.68%.

2. The Superintendent of Financial Services and Algoma entered into an agreement dated January 29, 2002 which specifically requires Algoma to file the application for a declaration that the Guarantee Fund applies to the Pension Plan.
3. The Superintendent of Financial services is satisfied that Algoma could not meet the funding requirements of the PBA for the Pension Plan, as of the effective date of the wind up of the Pension Plan.

**DATED** at North York, Ontario this 13th day of December, 2002.

Tom Golfetto

Director, Pension Plans Branch

By delegated authority from the Superintendent of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "PBA");

**AND IN THE MATTER OF** a Proposal by  
the Superintendent of Financial Services to  
make a Declaration under Section 83 of the PBA  
respecting the **Non-Contributory Pension  
Plan Covering Hourly Paid Bargaining  
Unit Employees of Algoma Inc.,  
Registration Number 0335802;**

**TO:** **Morneau Sobeco**  
Deloitte & Touche Inc.  
1500 Don Mills Road  
Toronto ON M3B 3K4

**Attention:** Mr. Al Kiel  
Partner

**Administrator of the  
Non-Contributory Pension  
Plan Covering Hourly Paid  
Bargaining Unit Employees  
of Algoma Steel Inc.**

**AND TO:** **Algoma Steel Inc.**  
105 West Street  
Sault Ste. Marie ON P6A 7B4

**Attention:** Mr. Paul C. Finley  
General Counsel and Corporate  
Secretary  
**Employer**

**AND TO:** **The United Steelworkers  
of America**  
68 Dennis Street  
Sault Ste. Marie ON P6A 2W9

**Attention:** Mr. Tom Bonell  
President, Local Union 2251  
**Union**

## **DECLARATION**

### **WHEREAS:**

1. The Non-Contributory Pension Plan Covering Hourly Paid Bargaining Unit Employees of Algoma Steel Inc., Registration No. 0335802 (the "Pension Plan"), is registered under the PBA;
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund"), by the PBA or the regulations made thereunder;
3. Algoma Steel Inc. (Algoma) instituted proceedings under the Companies' Creditors Arrangement Act, and its Plan of Reorganization was approved by its creditors and sanctioned by the court on December 19, 2001;
4. The Pension Plan was terminated effective September 17, 2001 by Algoma Steel Inc. in accordance with section 68 of the PBA;
5. The Superintendent of Financial Services appointed Morneau Sobeco as administrator (the "Administrator") of the Pension Plan on September 6, 2002;
6. On October 22, 2002, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated October 18, 2002, to make a Declaration that the Guarantee Fund applies to the Pension Plan; and
7. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received.





**NOW THEREFORE TAKE NOTICE** I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Report on the Plan Wind-up and Pension Benefits Guarantee Fund Application as at September 17, 2001 indicates an estimated funding deficiency of \$361,983,300 and an estimated funded ratio of 52.94%.
2. The Superintendent of Financial Services and Algoma entered into an agreement dated January 29, 2002 which specifically requires Algoma to file the application for a declaration that the Guarantee Fund applies to the Pension Plan.
3. The Superintendent of Financial services is satisfied that Algoma could not meet the funding requirements of the PBA for the Pension Plan, as of the effective date of the wind up of the Pension Plan.

**DATED** at North York, Ontario this 17th day of December, 2002.

Tom Golfetto

Director, Pension Plans Branch

By delegated authority from the Superintendent of Financial Services





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Gallaher Thorold Paper Co. Hourly Paid Pension Plan, Registration Number 1039981;**

**TO:** **Morneau Sobeco**  
895 Don Mills Road  
One Morneau Sobeco Centre  
Suite 700  
Toronto ON M3C 3W3

**Attention:** Mr. David R. Kearney  
**Administrator**  
**Ernst & Young Inc.**  
Ernst & Young Tower  
P.O. Box 251, 222 Bay Street  
Toronto-Dominion Centre  
Toronto ON M5K 1J7

**Attention:** Mr. Philip Kan, Manager  
**Trustee in Bankruptcy for**  
**Gallaher Thorold Paper Co.**

**AND TO:** **International Union of**  
**Operating Engineers**  
**Local 772**  
370 Main Street East, Suite 302  
Hamilton ON L8N 1J6

**Attention:** Greg Hoath, President  
**Communications Energy**  
**and Paper Workers Union**  
**of Canada**  
**Locals 290 and 1521**  
5890 Aspen Court  
Niagara Falls ON L2G 7V3

**Attention:** Michael Lambert

## **DECLARATION**

### **WHEREAS:**

1. The Gallaher Thorold Paper Co. Hourly Paid Pension Plan, Registration Number 1039981 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund"), by the Act or the regulations made thereunder; and
3. The Deputy Superintendent, Pensions, appointed Morneau Sobeco as the administrator (the "Administrator") of the Plan on July 10, 2002, to replace the previously-appointed administrator, Arthur Andersen Inc., and
4. On July 15, 2002 the Deputy Superintendent, Pensions, issued an Order dated July 12, 2002, that the Plan be wound up effective May 25, 1999, and on November 6, 2002, approved the wind up report filed for the Plan subject to any additional funding that may be required from the Guarantee Fund, and
5. On October 4, 2002, the Deputy Superintendent, Pensions, issued a notice of proposal to make a declaration that the Guarantee Fund applies to the Plan, and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received.



**NOW THEREFORE TAKE NOTICE** I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan at wind up has been estimated to be 73.60%.
2. The employer, Gallaher Thorold Paper Co., was assigned into bankruptcy on June 15, 1999.
3. The trustee in bankruptcy for Gallaher Thorold Paper Co. has advised the Administrator that there are no funds available from the estate of Gallaher Thorold Paper Co. to make payment to the Plan.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.

**DATED** at North York, Ontario this 8th day of January, 2003.

Tom Golfetto

Director, Pension Plans Branch

By Delegated Authority from the  
Superintendent of Financial Services.







**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28, respecting the **Pension Plan for Employees of Vulcan Packaging Inc. (the "Pension Plan")**, Registration Number 0364323;

**TO:** **Morneau Sobeco**  
Deloitte & Touche Inc.  
1500 Don Mills Road  
Toronto ON M3B 3K4

**Attention:** Mr. Al Kiel  
Partner  
**Administrator of the Pension Plan for Employees of Vulcan Packaging Inc.**

**AND TO:** **Vulcan Packaging Inc.**  
15 Bethridge Road  
Rexdale ON M9W 1M6

**Attention:** Mr. Alex Telfer  
President

**Employer**

**AND TO:** **Ernst & Young Inc.**  
175 Commerce Valley Drive West  
Suite 600  
Thornhill ON L3T 7P6

**Attention:** Mr. Harold Reiter  
**Trustee in Bankruptcy,  
Vulcan Packaging Inc.**

## **DECLARATION**

### **WHEREAS:**

1. The Pension Plan for Employees of Vulcan Packaging Inc., Registration No. 0364323 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund"), by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective May 15, 1997; and
4. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on August 1, 1997 and on August 11, 2002, appointed Morneau Sobeco as Administrator to replace Deloitte & Touche Inc.; and
5. On October 4, 2002, I issued a Notice of Proposal dated October 3, 2002 to make a Declaration that the Guarantee Fund applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received.

**NOW THEREFORE TAKE NOTICE** I declare, pursuant to sections 83 and 89 of the Act, that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Supplement to the Actuarial Valuation Report filed by the Administrator indicates an estimated funding deficiency of \$1,252,900 as at May 31, 2002 and an estimated claim against the Guarantee Fund of \$1,223,400.00 as at May 31, 2002.



2. Ernst & Young Inc. was appointed Trustee in Bankruptcy of Vulcan Packaging Inc. on May 15, 1997.
3. The Trustee in Bankruptcy for Vulcan packaging Inc. has advised the Administrator that there are no funds from the estate of Vulcan Packaging Inc. to make payments to the Pension Plan
4. The Administrator has advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the Act and Regulation cannot be satisfied.

**DATED** at North York, Ontario this 8th day of January, 2003.

K. David Gordon  
Deputy Superintendent, Pensions







## TRIBUNAL ACTIVITIES

### Appointments of Tribunal Members

Name and O.C.	Effective Appointment Date	Expiry Date
<b>Milczynski, Martha</b> (Chair)		
O.C. 1622/2001	June 20, 2001	June 19, 2004
O.C. 1665/99	October 6, 1999	July 7, 2001
O.C. 1808/98	July 8, 1998	October 6, 1999
<b>McNairn, Colin</b> (Vice-Chair)		
O.C. 1623/2001	June 20, 2001	June 19, 2004**
O.C. 1809/98	July 8, 1998	July 7, 2001
<b>Corbett, Anne</b> (Vice-Chair Acting)		
O.C. 1438/2001	June 20, 2001	June 19, 2004**
<b>Ashe, Kevin</b>		
O.C. 1510/2002	September 26, 2002	September 25, 2005
<b>Bharmal, Shiraz Y.M.</b>		
O.C. 1511/2002	September 9, 2002	September 8, 2005
<b>Erlichman, Louis</b>		
O.C. 439/2002	January 23, 2002	January 22, 2005**
O.C. 2527/98	December 9, 1998	December 8, 2001
O.C. 1592/98	June 17, 1998	December 16, 1998
<b>Gavin, Heather</b>		
O.C. 440/2002	January 23, 2002	January 22, 2005**
O.C. 11/99	January 13, 1999	January 12, 2002
<b>Litner, Paul W.</b>		
O.C. 1512/2002	September 9, 2002	September 8, 2005
<b>Martin, Joseph P.</b>		
O.C. 1626/2001	June 20, 2001	June 19, 2004**
O.C. 1810/98	July 8, 1998	July 7, 2001
<b>Moore, C.S. (Kit)</b>		
O.C. 1625/2001	June 20, 2001	June 19, 2004**
O.C. 1591/98	July 1, 1998	June 30, 2001
<b>Short, David A.</b>		
O.C. 2118/2001	October 24, 2001	October 23, 2004**
<b>Vincent, J. David</b>		
O.C. 2119/2001	October 24, 2001	October 23, 2004**

\*\* Or on the day FSCO/OSC merges, if earlier



## Pension Hearings Before the Financial Services Tribunal

### Imperial Oil Limited

**Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc. Registration Number 344002, FST File Number P0130-2000;**

On October 31, 2000, Imperial Oil Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated October 3, 2000, proposing to refuse to approve Partial Wind Up Reports in respect of two Plans of which Imperial Oil is the Administrator.

The stated reasons for the proposed refusal include the failure of each Wind Up Report to do the following: (a) reflect the liabilities associated with all of the members of the Plan whose employment was terminated by Imperial Oil during the wind up period; (b) apply the grow-in provisions of section 74 of the *Pension Benefits Act* in a proper manner; (c) provide benefits in accordance with elections made, as required under subsection 72(1) of the *Pension Benefits Act*, among various options including those available as a result of partial wind up; and (d) provide for the distribution of assets related to the partial wind up group.

A pre-hearing conference was held on June 19, 2001. At the pre-hearing conference, the Superintendent agreed to amend the Notice of Proposal in this matter to delete reference to (d) above.

A hearing and preliminary motion with respect to answers to interrogatories was held on July 25, 2001. The Tribunal ordered the Superintendent to respond to the first and second set of the Applicant's interrogatories within six weeks of the date of the order subject to the qualification that the Superintendent need not produce any documents or reveal any commu-

nications to which the law of privilege applies. Written Reasons for Order dated September 10, 2001, were published in Volume 11, Issue 1 of the Pension Bulletin.

A continuation of the pre-hearing conference was held on December 20, 2001. The pre-hearing conference was adjourned to allow the parties to bring motions with respect to answers to interrogatories. On July 24, 2002, the Tribunal heard two motions. The Applicant's notice of motion dated June 7, 2002, asked for an order of the Tribunal directing the Superintendent to provide further and better answers to some of its interrogatories. The Tribunal made an order directing the Superintendent to respond to certain of the interrogatories but with some modifications. Reasons for Order dated September 11, 2002, were published in Volume 12, Issue 1 of the Pension Bulletin. The time for the Superintendent's response under this Order was extended by Consent Order dated October 22, 2002.

The Superintendent's notice of motion dated June 5, 2002, asked for an order of the Tribunal directing the Applicant to answer those interrogatories it had served on the Applicant on October 11, 2001, that remained outstanding. The Tribunal made an order directing the Applicant to respond to certain of the interrogatories but with some modifications. The Reasons for Order dated September 20, 2002, were published in Volume 12, Issue 1 of the Pension Bulletin.

The pre-hearing conference scheduled to resume on December 18, 2002, was rescheduled to February 27, 2003, and was further adjourned to April 28, 2003, at the request of the parties, due to ongoing settlement discussions.



**Marshall-Barwick (formerly Marshall Steel Limited), Registration Number 0968081, FST File Number P150-2001;**

On January 16, 2001, Marshall-Barwick Inc. (formerly Marshall Steel Limited) requested a hearing in respect of the Superintendent's Notice of Proposal dated December 12, 2000. The Superintendent is proposing to refuse to approve a Partial Wind Up Report (the "Report") as at August 28, 1992, respecting the Retirement Plan for Salaried Employees of Marshall Steel Limited and Associated Companies in relation to employees who ceased to be employed by Marshall Steel Limited as a result of the closure of its plant in Milton, Ontario. The Superintendent's basis for the Notice of Proposal is that the Report does not protect the interests of all those affected by the partial wind up, specifically Mr. Jeffrey G. Marshall, an employee who was terminated during the wind up period. On June 4, 2001, Jeffrey G. Marshall applied for party status. A pre-hearing conference was held on August 13, 2001, at which time Mr. Marshall was granted full party status. The hearing scheduled for November 29 and 30, 2001, was adjourned as a result of a joint request made by the parties on November 6, 2001. The reason for the request was due to the applicant providing Mr. Marshall with actuarial data in respect of Mr. Marshall's benefit entitlements. Mr. Marshall required additional time to obtain expert advice in respect of the information. The hearing was held on September 9, 2002. In its Reasons dated November 29, 2002, the Tribunal affirmed the Superintendent's Notice of Proposal and directed the company as administrator to file a revised Partial Wind Up Report that includes Mr. Marshall in the partial wind up group. The Reasons for Decision dated November 29, 2002, are published in this bulletin on page 128.

The Applicant filed a notice of appeal dated December 20, 2002, with the Divisional Court of the Tribunal's Order dated November 29, 2002.

On December 30, 2002, Mr. Marshall filed submissions requesting that the Tribunal award his costs to be paid by the Applicant. The decision is reserved.

**Consumers Packaging Inc., Pension Plan II, Registration Number 0998682, FST File Number P162-2001;**

On May 17, 2001, Consumers Packaging Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated April 20, 2001, to Refuse to Approve a Partial Wind Up Report filed by Consumers Packaging Inc. on May 19, 2000, with respect to a partial wind up of the Consumers Packaging Inc. Pension Plan II, Registration Number 0998682, as at May 7, 1997, and to Refuse to Register an Amendment to such Pension Plan filed by Consumers Packaging Inc. on May 19, 2000, titled Amendment # 2.

The basis for the Notice of Proposal was that Consumers Packaging Inc. filed a Partial Wind Up Report (the "Report") in 1997. The Superintendent issued two Notices of Proposal in 1999 ordering Consumers Packaging Inc. to accept as members of the Plan certain replacement call-in employees and refusing to approve the 1997 Partial Wind Up Report (the "Report") on the grounds that the replacement call-in employees were not included in the Report and that "grow-in" to plant closure benefits was not provided to unionized hourly employees affected by the partial wind up. Consumers Packaging Inc. requested a hearing before the Financial Services Tribunal with respect to both Notices of Proposal. The hearing concerning the call-in employees was settled by the parties and Consumers Packaging Inc. accepted as members of the Plan those replace-





ment call-in employees who met certain conditions. The hearing request regarding the "grow-in" benefits was withdrawn. Consumers Packaging Inc. was ordered to file an amended Partial Wind Up Report. In addition, in 1997, Consumers Packaging filed an application to register Amendment # 2 to the Plan which provided enhanced bridge benefits to some members.

On May 19, 2000, Consumers Packaging filed a revised Partial Wind Up Report (the "revised Report") and a revised application to register Amendment #2 (the "revised Amendment"). The Superintendent issued the April 20, 2001 Notice of Proposal stating reasons that the revised Amendment is void pursuant to clause 14(1)(c) of the *Pension Benefits Act*, and that the revised Report does not meet the requirements of the *Pension Benefits Act*, pursuant to subsection 70(5), because the commuted value of the pension benefits and ancillary benefits for the affected members is calculated based on the revised Amendment, which is void under the Act. The revised Report does not protect the interests of the members and former members of the Plan for the same reason.

The Superior Court of Justice, Commercial List, issued an Order, dated May 23, 2001, stating that any suit, action, enforcement process, extra-judicial proceeding, regulatory, administrative or other proceeding against or in respect of Consumers Packaging Inc. already commenced be stayed and suspended until and including June 22, 2001. A further Order was issued on June 18, 2001, extending the stay period until August 15, 2001 and again until October 1, 2001. On October 1, 2001, a Pension Assumption Agreement was made. A pre-hearing conference was held on February 19, 2002. A motion brought by Consumers Packaging for an order compelling the Superintendent to

answer certain interrogatories was heard on April 18, 2002, at which time the motion was dismissed. The hearing was held on July 29 and 31, 2002. In its Reasons dated November 29, 2002, the Tribunal directed the Superintendent to carry out the Notice of Proposal dated April 20, 2001, after having found the 1997 Plan Amendment establishing the Enhanced Bridge to be valid, effective and binding upon the Company (the Enhanced Bridge forming part of the Plan). The Reasons for Decision dated November 29, 2002, are published in this bulletin on page 118.

**CBS Canada Co., Westinghouse Canada Inc. Pension Plan, Registration Numbers 348409 and 526632, FST File Number P164-2001;**

On June 8, 2001, CBS Canada Co., the successor to Westinghouse Canada Inc., requested hearings in connection with the Superintendent's Notices of Proposal dated May 9 and 15, 2001, to Refuse to Approve various Partial Wind Up Reports in respect of the Salaried Employees Pension Plan and the Hourly Paid Employees Pension Plan of Westinghouse Canada Inc. The partial wind ups were triggered by the closure by ABB Canada Inc. of its plants in London, Ontario; St. Jean, Quebec; and Burlington, Ontario, at which it carried on businesses acquired from Westinghouse Canada Inc., and by the closure by Westinghouse Canada Inc. of its Motors Division plant in Hamilton, Ontario. The basis for each Notice of Proposal was that the relevant Partial Wind Up Report failed to provide employer request early retirement benefits and related bridge benefits, contemplated by each Plan, to all members of the partial wind up group whose age plus years of service equaled at least 55 and because the Report failed to provide for the distribution of surplus relating to the partial wind up group.



On June 19, 2001, CAW Canada, which represented the employees who were members of the Westinghouse Hourly Paid Employees Pension Plan, filed an application for party status in these proceedings. At a pre-hearing conference on November 5, 2001, CAW Canada was granted party status in the proceedings concerning the Notices of Proposal relating to the Hourly Employees Pension Plan and was given limited rights to participate in the proceedings concerning the Notices of Proposal relating to the Salaried Employees Pension Plan. The various proceedings were directed to be heard together.

At a continuation of the pre-hearing conference, held on November 29, 2001, a hearing was scheduled for February 4-5, 2002, to deal with several jurisdictional issues to be brought on by motion of CBS Canada Co. Those issues included the following:

1. whether the Superintendent was entitled to rescind the initial approvals that she had given with respect to several of the Partial Wind Up Reports, for failure to adhere to the doctrine of fairness, and for which she subsequently substituted Notices of Proposal to refuse approval;
2. whether the Tribunal could direct the Superintendent to refuse approval of certain of the Wind Up Reports on the basis of a ground that was not specifically recited in the relevant Notices of Proposal;
3. whether the Tribunal could determine the responsibility for any special benefits payable to the former Westinghouse employees at the facilities that were closed by ABB Inc. as between CBS Canada Co. and ABB Inc.; and
4. whether the Tribunal could order that ABB Inc. be added as a party to the proceedings against its will.

At the hearing on the jurisdictional motion, the Tribunal refused to order that ABB Inc. be added as a party, but otherwise reserved its determination of the issues raised by the motion. Reasons for Decision on the jurisdictional motion dated March 4, 2002 were published in Volume 11, Issue 3 of the Pension Bulletin.

The Applicant filed a notice of appeal dated April 3, 2002, with the Divisional Court of the Tribunal's Order dated March 4, 2002.

A settlement conference was held on August 7-8, 2002. On October 4, 2002, a motion hearing was held with respect to the Applicant's notice of motion dated September 25, 2002, asking for an order that the CAW respond to the Applicant's interrogatories dated September 25, 2002. At the motion hearing the parties agreed that the motion could be dealt with by way of a consent order and such an order was subsequently issued.

On November 21, 2002, the December hearing dates were adjourned at the request of the parties except for December 5, 2002, pending settlement discussions between the parties. On December 5, 2002, the matter resumed as a pre-hearing conference and new hearing dates were set. The hearing is scheduled for March 31, 2003, April 1-3, 2003 and May 6-8, 2003.

**Crown Cork & Seal Canada Inc.,  
Registration Numbers 474205, 595371 &  
338491, FST File Number P0165-2001;**

On June 29, 2001, Crown Cork & Seal Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated May 29, 2001, to refuse to consent to a transfer of assets proposed by Crown Cork & Seal Canada Inc. from the Crown Cork & Seal Canada Inc. Pension Plan for Salaried Employees, Registration Number 0474205, and the Pension Plan for Clerical Employees of Crown Cork &





Seal Canada Inc., Registration Number 0595371, into the Crown Cork & Seal Canada Inc. Pension Plan for Employees, Registration Number 338491. The basis for the refusal is that the asset transfer does not protect the pension benefits and other benefits of the members and former members of the Plans.

At the request of both parties a settlement conference was held on October 30, 2001, prior to the scheduling of a pre-hearing conference. At the settlement conference the parties agreed to adjourn the matter *sine die* pending discussions between the parties.

On February 11, 2003, counsel for the Superintendent requested a pre-hearing conference be scheduled as the parties have been unable to resolve the issues in this matter.

The pre-hearing conference date is scheduled for May 12, 2003.

**Stanley Canada Inc., Pension Plan for Designated Employees of Stanley Canada Inc., Registration Number 456897, FST File Number P0170-2001;**

On August 27, 2001, Stanley Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated July 26, 2001, to refuse to consent to the application for payment of surplus to the Employer dated April 1999, pursuant to section 78(1) of the *Pension Benefits Act*.

An Application for Party Status was filed on November 20, 2001, by Mr. Blaine Mitton, a Member of the Plan.

The pre-hearing conference scheduled for November 28, 2001 was rescheduled to January 10, 2002, at which time Mr. Mitton was granted party status. On January 11, 2002, an Application for Party Status was filed by Mr. Edward Holba, a Member of the Plan. The parties consented to Mr. Holba's Application for

Party Status and full party status was granted by Order dated April 4, 2002. The May 2002 hearing dates were adjourned at the request of the parties for a motion to be brought by the Superintendent concerning expert evidence. The motion was heard on May 22, 2002. At the hearing on November 19, 2002, the terms of settlement between Stanley Canada and the Superintendent were made an Order of the Tribunal. The Order is published in this bulletin on page 112.

**The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration Number 239475, FST File Number P0172-2001;**

On September 20, 2001, The Corporation of the City of Kitchener requested a hearing regarding the Superintendent's Notice of Proposal dated August 23, 2001, to refuse to consent to the application for payment of surplus to the employer, pursuant to section 78(1) of the *Pension Benefits Act*, from The City of Kitchener Pension Plan for Fire Department Employees, Registration No. 239475.

A pre-hearing conference was held on April 25, 2002, at which time the parties agreed to a settlement conference. The settlement conference date of July 16, 2002 was rescheduled at the parties' request and was held on September 4, 2002. At the settlement conference the matter was adjourned *sine die*.

On February 7, 2003, counsel for the Superintendent requested the pre-hearing conference be reconvened. The pre-hearing conference date is scheduled for April 17, 2003.





**Retirement Pension Plan for Employees of Twin Oak Credit Union Ltd., Registration Number 284257, FST File Number P0178-2002;**

On January 11, 2002, Twin Oak Credit Union Ltd. requested a hearing regarding the Superintendent's Notice of Proposal dated December 13, 2001, proposing to make an order under section 87 of the *Pension Benefits Act*, with respect to Carol Joseph and any other part-time employee eligible for membership in the Plan. The Superintendent has proposed that the administrator of the Plan pay to Ms. Joseph her pension benefit determined on the basis that Ms. Joseph was eligible for membership and should have been enrolled in the Plan effective January 1, 1978. The Superintendent also proposed to order the administrator to provide, to any other part-time employee who was eligible to participate in the Plan, the monthly pension benefit determined on the basis that the part time employee was eligible for membership and should have been enrolled in the Plan effective January 1, 1978 or later if employed at a later date. The Superintendent also proposed that any lump sum owing to Ms. Joseph or any other eligible part-time employee representing retroactive payments shall also be credited with interest payable pursuant to subsection 21(11) of Regulation 909 made under the Act.

Applications for Party Status were filed by Carol Lynne Joseph, Mary Lynn Feenan, Sharon Wiese, Donna Fredricks and Wendy Edmunds.

At the pre-hearing conference on April 24, 2002, full party status was granted to Ms. Joseph, Ms. Feenan, Ms. Wiese and Ms. Fredricks. Party status was not granted to Ms. Edmunds.

The parties agreed to a settlement conference which was held on June 4, 2002. The parties also agreed that a preliminary motion will be brought to decide whether or not the Tribunal

has the jurisdiction to deal with the proposed issue of whether or not the employer is entitled to a credit for payments made in lieu of benefits to part-time employees under collective agreements during the period January 1, 1978 to January 1, 1988 and whether the *Limitations Act* bars this proceeding. The Motion scheduled for November 6, 2002, did not proceed at the request of the parties as settlement discussions are ongoing. The hearing is scheduled for February 24, 26-28, 2003 and March 26-28, 2003. Hearing dates were adjourned except February 27-28, 2003, at the request of the applicant, pending further settlement discussions. On February 25, 2003, the matter settled.

**Marcel Brousseau, Electrical Industry of Ottawa Pension Plan, Registration Number 0586396, FST File Number P0183-2002;**

On February 20, 2002, Marcel Brousseau a member of the Plan, requested a hearing regarding the Superintendent's Notice of Proposal dated January 22, 2002, to refuse to make an order in respect of the Plan Administrator's determination pursuant to section 87 of the *Pension Benefits Act*, of Mr. Brousseau's pensionable service under the terms of the Plan.

A pre-hearing conference was held on August 27, 2002. At the pre-hearing conference, the Superintendent raised a jurisdictional issue. The parties agreed that the issue on the motion will be, "Given the November 19, 2001 decision of the Superior Court of Justice in Court File No. 01-CV-18268, does the Tribunal have jurisdiction to proceed in the circumstances of this case?". The motion was heard on November 29, 2002. The decision is reserved.



**Kerry (Canada) Inc., Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0191-2002;**

On May 22, 2002, Kerry (Canada) Inc., requested a hearing regarding the Superintendent's Notice of Proposal dated April 22, 2002, proposing to make an order that Kerry (Canada) Inc.:

- reimburse the pension fund (the "Fund") of the Plan for all amounts paid out of the Fund from January 1, 1985 for expenses that were not incurred for the exclusive benefit of the members and retired members of the Plan;
- reimburse the Fund for all income that would have been earned by the Fund if those expenses had not been paid from the Fund; and
- amend the Plan and the trust (the "Trust") in respect of the Fund so that the provisions of the Plan and the Trust relating to the deduction of expenses from the Fund are consistent with the 1954 versions of the Plan and the Trust.

On June 10, 2002, an application for party status was filed by Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter, R. A. Varney and Bill Fitz, being the members of the DCA Employees Pension Committee.

At the pre-hearing conference on October 15, 2002, full party status was granted to the individuals comprising the DCA Employees Pension Committee, representing the members and retired members of the Plan, and it was agreed that the hearing in this matter would be held together with the hearing in P0192-2002. The pre-hearing conference was adjourned to allow the parties to bring certain motions with respect to disclosure. At the motion hearing on December 6, 2002, an order for disclosure was issued against Kerry (Canada) Inc.

On January 22, 2003, the pre-hearing conference resumed and was further adjourned to allow a further disclosure motion to be brought by the DCA Employees Pension Committee. The motion was heard on March 27, 2003, at which time it was dismissed.

**Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter, R.A. Varney and Bill Fitz being the members of the DCA Employees Pension Committee, Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0192-2002;**

On May 27, 2002, William Fitz on behalf of the DCA Employees Pension Committee, requested a hearing regarding the Superintendent's Notice of Proposal, dated April 22, 2002, proposing to refuse to make an order that:

- the Plan be wound up, effective December 31, 1994;
- Kerry (Canada) Inc. pay to the pension fund (the "Fund") of the Plan all employer contributions for which a contribution holiday was taken since January 1, 1985, together with income that would have been earned by the Fund if those contributions had been made; and
- registration of the Revised and Restated Plan Text dated January 1, 2000, and all amendments to the Plan included therein, be refused.

On June 5, 2002, an application for party status was filed by Kerry (Canada) Inc.

At the pre-hearing conference on October 15, 2002, full party status was granted to Kerry (Canada) Inc., and it was agreed that the hearing in this matter would be held together with the hearing in P0191-2002. The pre-hearing





conference was adjourned to allow the parties to bring certain motions with respect to disclosure. At the motion hearing on December 6, 2002, three orders for disclosure were issued, one against Kerry (Canada) Inc., one against the DCA Employees Committee and one against the Superintendent.

On January 22, 2003, the pre-hearing conference resumed and was further adjourned to allow a further disclosure motion to be brought by the DCA Employees Pension Committee. The motion was heard on March 27, 2003, at which time it was dismissed.

#### **Robert Kerschbaumer**

**(AFG Industries Ltd. Salaried Pension Plan, Registration Number 1070853),  
FST File Number P0197-2002;**

On September 4, 2002, Robert Kerschbaumer, requested a hearing regarding the Superintendent's Notice of Proposal dated August 2, 2002, to make an order under subsection 78(1) of the *Pension Benefits Act*, consenting to a payment out of AFG Industries Ltd., Salaried Pension Plan, Registration Number 1070853.

Applications for party status were filed by AFG Industries Ltd. on October 11, 2002, and AFG Committee Members on October 15, 2002.

A pre-hearing conference was scheduled for February 10, 2003. On November 22, 2002, the request for hearing was withdrawn.

#### **Alan Bishop**

**(Contributory Pension Plan for Salaried Employees of McMaster University Including McMaster Divinity College 2000, Registration Number 1079920),  
FST File Number P0198-2002;**

On October 23, 2002, Alan Bishop requested a hearing regarding the Superintendent's Notice of Proposal dated September 27, 2002, to make

an order under subsection 78(1) of the *Pension Benefits Act*, consenting to a payment out of the Contributory Pension Plan for Salaried Employees of McMaster University Including McMaster Divinity College 2000, Registration Number 1079920.

Applications for party status were filed by McMaster University on October 31, 2002, and Some Members and Former Members of the Contributory Pension Plan for Salaried Employees of McMaster University including McMaster Divinity College 2000, on November 19, 2002. On November 8, 2002 an application for party status was filed by Lynda Fay, but was subsequently withdrawn on November 19, 2002.

A pre-hearing conference was scheduled for January 20, 2003. On December 24, 2002, the request for hearing was withdrawn.

**Slater Steel Inc. Pension Plan for Corporate Employees and Salaried Employees of the Hamilton Specialty Bar Division, Registration Number 308338,  
FST File Number P0203-2002**

On October 31, 2002, Slater Steel Inc. requested a hearing regarding the Superintendent's Notice of Proposal dated September 27, 2002, to make an order under section 69(1)(d) of the *Pension Benefits Act*, that the Plan be wound up in part in relation to those members and former members of the Plan who ceased to be employed by Slater Steel Inc. effective from March 13, 1998 to January 26, 2000, as a result of the reorganization of the business of Slater Steel.

On November 7, 2002, an application for party status was filed by John Hughes.

At the pre-hearing conference on February 11, 2003, full party status was granted to John Hughes. At the pre-hearing conference, Slater Steel Inc. and the Superintendent indicated that





they would be bringing motions with respect to disclosure. The motions are scheduled for May 14, 2003. Hearing dates are scheduled for October 8-10, 15-16, 2003 and December 4-5, 2003.

**George Polygenis, Public Service Pension Plan, Registration Number 0208777, FST File Number P0204-2002**

On November 12, 2002, George Polygenis requested a hearing regarding the Superintendent's Notice of Proposal dated October 11, 2002, to refuse to make an order, under section 87(1) of the Act, that the Pension Policy Committee of the Ontario Pension Board reconsider its decision denying a disability pension to the Applicant under section 14(1) of the Public Service Pension Plan.

On November 26, 2002, an application for party status was filed by the Ontario Pension Board.

At a pre-hearing conference on January 27, 2003, full party status was granted to the Ontario Pension Board, and the parties agreed to a settlement conference. The settlement conference was held on February 10, 2003 and is to continue at some future date with the participation of Mr. Polygenis' employer as well as the expected parties.

It was determined at the pre-hearing conference that a preliminary motion will be heard to determine "What degree of deference should the Tribunal exercise in reviewing the decision of the Board denying the Applicant entitlement to a disability pension"? The motion is scheduled for March 26, 2003. On March 14, 2003, the parties agreed to adjourn the March motion hearing sine die.

The hearing date is scheduled for June 11, 2003.

**Barbara Lewis, Retirement Plan for Unionized Employees of Donohue Forest Products Inc., Pulp and Paper Divisions — Thorold Sector, Registration Number 0294496, FST File Number P0207-2002;**

On November 18, 2002, Barbara Lewis requested a hearing regarding the Superintendent's Notice of Proposal dated November 8, 2002, to refuse to make an order under section 87(2)(a) and (c) of the Act, requiring Donohue Forest Products Inc. to comply with sections 37(3)(b) and 48(1) of the Act and the terms of the Plan in the calculation of the pre-retirement death benefits payable from the Plan to Barbara Lewis, spouse of the late Harold Lewis.

On February 6, 2003, an application for party status was filed by Abitibi-Consolidated Company of Canada (formerly Donohue Forest Products Inc.).

At the pre-hearing conference on February 21, 2003, full party status was granted to Abitibi-Consolidated Company of Canada. The hearing is scheduled for July 2-4, 2003.

**Ontario Teachers' Pension Plan Board, Ontario Teachers' Pension Plan, Registration Number 0345785, FST File Number P0217-2003;**

On February 25, 2003, the Ontario Teachers' Pension Plan Board requested a hearing regarding the Superintendent's Notice of Proposal dated January 8, 2003, to make an order under sections 87(2)(a) and (c) of the Act, requiring the administrator of the Plan to pay Ronald A. Wilson, a former Member of the Plan, his pension in the form of a joint and survivor pension in accordance with section 44(1) of the Act.

The pre-hearing conference date is scheduled for May 26, 2003.



## The following cases are Adjourned *sine die*

- **Revised Retirement Plan for Employees of the Allen-Bradley Division of Rockwell International of Canada (now the Pension Plan for Employees of Rockwell Automation Canada Inc.), Registration Number 321554 and the Pension Plan for Salaried and Management Employees of Reliance Electric Limited, Registration Number 292946, FST File Number P0051-1999;** At a pre-hearing conference on July 6, 1999, the matter was adjourned *sine die*.
- **The Retirement Plan for Salaried Employees (Consumers Foods) of General Mills Canada, Inc., Registration Number 342042, FST File Number P0058-1999;** Matter continues to be adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Gerald Menard (Public Service Pension Plan, Registration Number 208777 and the Ontario Municipal Employees' Retirement System "OMERS", Registration Number 345983), FST File Number P0071-1999;** Matter adjourned *sine die* at a pre-hearing conference on February 21, 2000.
- **Consumers' Gas Ltd., Registration Number 242016, FST File Number P0076-1999;** At the pre-hearing conference on June 27, 2000, the matter was adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Schering-Plough Healthcare Products Canada Inc. Salaried Employees' Pension Plan, Registration Number 297903, FST File Number P0085-1999;** Matter was adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Eaton Yale Limited Pension Plan for Salaried Employees of Cutler-Hammer Canada Operations, Registration Number 440396, FST File Number P0117-2000;** At the request of the parties, this matter was adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Cooper Industries (Canada) Inc., Registration Number 0240622, FST File Number P156-2001;** The pre-hearing conference for May 27, 2002 was adjourned to a date to be set at the request of the parties, pending the outcome of the *Monsanto* case.
- **Pension Plan for the Employees of Dyment Limited, Registration Number 0242735, FST File Number P0157-2001;** The April 15 and 16, 2002 hearing dates were adjourned at the parties' request so that settlement discussions may continue.
- **James MacKinnon (Labourers' Pension Fund of Central and Eastern Canada), Registration Number 573188, FST File Number P0167-2001;** On July 10, 2002, the hearing dates were adjourned *sine die* on consent of the parties.
- **Canadian Tack & Nail Ltd. Pension Plan for Salaried Employees, Registration Number 0581306, FST File Number P0171-2001;** At a settlement conference on June 27, 2002, the parties reached agreement and agreed to adjourn the hearing *sine die*. Any breach in the terms of the settlement gives the parties the right to ask that the pre-hearing conference be rescheduled.



- **Molson Canada, Molson Breweries Pension Plan for Operating Engineers, Registration Number 0390666; Molson Canada Pension Plan for Hourly Employees in Ontario and Atlantic Canada, Registration Number 0334094; and Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086, FST File Number P0187-2002;** The pre-hearing conference scheduled for October 28, 2002, was adjourned *sine die* on consent of the parties.
- **Donna Marie Sloan, Ontario Teachers' Pension Plan, Registration Number 0345785, FST File Number P0188-2002;** The pre-hearing conference scheduled for August 20, 2002 was adjourned *sine die* on consent, pending settlement discussions between the parties.
- **Bauer Nike Hockey Inc. Pension Plan for Employees of Bauer Nike Hockey Inc., Registration Number 257337, FST File Number P0189-2002;** At the pre-hearing conference on October 28, 2002, the matter was adjourned *sine die* pending the outcome of the *Monsanto* case.





## Financial Hardship

Application to the Superintendent of Financial Services for Consent to Withdraw Money from a Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund based on Financial Hardship.

<b>FST File Number</b>	<b>Superintendent of Financial Services' Notice of Proposal</b>	<b>Comments</b>
U0200-2002	To Refuse to Consent, dated September 23, 2002	Reasons for Decision dated December 23, 2002
U0202-2002	To Refuse to Consent dated October 7, 2002	Reasons for Decision dated November 28, 2002
U0205-2002	To Refuse to Consent dated October 7, 2002	Reasons for Decision dated December 20, 2002
U0206-2002	To Refuse to Consent dated October 21, 2002	Reasons for Decision dated December 17, 2002
U0208-2002	To Refuse to Consent dated October 21, 2002	Withdrawn December 2, 2002
U0209-2002	To Refuse to Consent dated October 21, 2002	Reasons for Decision dated December 20, 2002
U0211-2003	To Refuse to Consent dated January 6, 2003	Reasons for Decision dated February 19, 2003
U0212-2003	To Refuse to Consent dated January 6, 2003	Reasons for Decision dated March 10, 2003
U0213-2003	To Refuse to Consent dated January 20, 2003	Reasons for Decision dated March 24, 2003
U0214-2003	To Refuse to Consent dated December 20, 2002	Reasons for Decision dated March 24, 2003
U0215-2003	To Refuse to Consent dated January 20, 2003	Reasons for Decision dated March 5, 2003
U0216-2003	To Refuse to Consent dated January 20, 2003	Reasons for Decision dated March 18, 2003
U0219-2003	To Refuse to Consent dated January 20, 2003	WITHDRAWN March 5, 2003

## Decisions to be Published

Consumers Packaging Inc.	Marshall-Barwick	Stanley Canada Inc.
U0200-2002 Reasons	U0202-2002 Reasons	U0205-2002 Reasons
U0206-2002 Reasons	U0209-2002 Reasons	U0211-2002 Reasons
U0212-2003 Reasons	U0213-2003 Reasons	U0214-2003 Reasons
U0215-2003 Reasons	U0216-2003 Reasons	



## Financial Services Tribunal Decisions with Reasons

<b>INDEX NO.:</b>	FST File Number P0170-2001
<b>PLAN:</b>	Pension Plan for Designated Employees of Stanley Canada Inc., Registration No. 456897 (the "Plan")
<b>DATE OF DECISION:</b>	November 19, 2002
<b>PUBLISHED:</b>	Bulletin 12/2 and FSCO web site

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c.P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services (the "Superintendent") to Refuse to Consent to the Application for payment of surplus to the Employer submitted by Stanley Canada Inc. in respect of the **Pension Plan for Designated Employees of Stanley Canada Inc., Registration No. 456897 (the "Plan")**;

**AND IN THE MATTER OF** a Hearing in accordance with subsection 89(8) of the Act.

**BETWEEN:**

**STANLEY CANADA INC.**

**Applicant**

- and -

**SUPERINTENDENT OF FINANCIAL SERVICES**

**Respondent**

**BEFORE:**

Martha Milczynski  
Chair of the Tribunal

Kathryn Bush  
Vice-Chair of the Tribunal

David Short  
Member of the Tribunal

### **APPEARANCES:**

#### **For the Applicant:**

Freya Kristjanson  
Barry Glaspell

#### **For the Superintendent of Financial Services:**

Deborah McPhail

#### **For the Members Ed Holba and Blaine Mitton:**

Robert Forsyth Q.C. (via teleconference)

### **HEARING HELD:**

November 19, 2002  
Toronto, Ontario

### **ORDER**

On the basis of the pleadings and written submissions filed, the Minutes of Settlement dated October 24, 2002, attached hereto as Annex "A" containing the Consent to the Order herein filed, and on hearing the oral submissions by counsel for the Superintendent, the Applicant and the Represented Members, the Tribunal makes the following Order:

1. That the Superintendent is directed to refrain from carrying out the Notice of



Proposal to Refuse to Consent to the payment of surplus to the Applicant dated July 26, 2001; and

2. We direct the payment of the surplus to the Applicant, subject to the interest payments referred to in paragraph 1(e) of the Minutes of Settlement, in accordance with the terms and provisions of the Surplus Distribution Agreement.

**DATED** at Toronto, Ontario, this 19th day of November, 2002.

Martha Milczynski,  
Chair of the Tribunal and  
Member of the Panel

Kathryn Bush,  
Vice-Chair of the Tribunal and  
Chair of the Panel

David Short,  
Member of the Tribunal and of the Panel





**FINANCIAL SERVICES TRIBUNAL: FST File No.: P0170-2001****ANNEX "A"**

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services (the "Superintendent") to Refuse to Consent to the Application for payment of surplus to the Employer submitted by Stanley Canada Inc. in respect of **The Pension Plan for Designated Employees of Stanley Canada Inc., Registration No. 456897 (the "Plan")**;

**AND IN THE MATTER OF** a Hearing in accordance with subsection 89(8) of the Act.

**BETWEEN:**

**STANLEY CANADA, INC.**

**Applicant**

- and -

**SUPERINTENDENT OF FINANCIAL SERVICES**

**Respondent**

**MINUTES OF SETTLEMENT:**

(Dated October 24, 2002)

**WHEREAS** the Pension Plan for Designated Employees of Acmetrack Limited (the "Plan"), a defined benefit pension plan, is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 ("PBA") as Registration No. 456897 and with the Canada Customs and Revenue Agency under the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c. 1 as am. ("ITA") and is administered by Stanley Canada, Inc. (the "Applicant");

**AND WHEREAS** the Plan was terminated and wound up effective December 31, 1993;

**AND WHEREAS** the Report on the Wind Up of the Pension Plan for Designated Employees of Acmetrack Limited as of December 31, 1993, indicated that there were surplus assets of approximately \$1,013,748.00 after provision of Plan benefits;

**AND WHEREAS** the Superintendent approved distribution of the Plan benefits to the three members of the Plan ("Members") by letter dated March 21, 1997;

**AND WHEREAS** the Members, who constituted all the members, former members and other persons entitled to Plan benefits as at December 31, 1993, entered the Surplus Distribution Agreement ("SDA") on September 16, 1998 which is attached hereto as Annex "A,"

**AND WHEREAS** the Applicant applied to the Superintendent of Financial Services for Consent to the distribution of surplus from the Plan in accordance with the Surplus Distribution Agreement in April 1999 (the "Application");

**AND WHEREAS** the Deputy Superintendent gave a Notice of Proposal to Refuse to Consent to the Application dated July 26, 2001;

**AND WHEREAS** the Applicant requested a Hearing pursuant to PBA s. 89(6) on August 21, 2001;

**AND WHEREAS** Members Ed Holba and Blaine Mitton (the "Represented Members") obtained standing as Parties to the Hearing by Order of the Financial Services Tribunal ("Tribunal") and retained Robert Forsyth Q.C. as counsel, the third Member Robert T. Spicer not appearing or obtaining standing after having been duly served with the Notice of Hearing;



**AND WHEREAS** the Hearing by the Tribunal is scheduled to commence on November 19, 2002;

**AND WHEREAS** the Applicant, the Superintendent, and the Represented Members (collectively the "Parties"), at a Settlement Conference, have reached agreement settling all issues between the Parties ("Settlement Agreement"), subject to approval by the Tribunal, and the Parties wish to record the terms of the Settlement Agreement herein:

1. The Parties agree that:

- a. amounts transferred from the Pension Plan for the Employees of Acmetrack Limited (the "Acmetrack Plan") and the Deferred Profit Sharing Plan for Employees of Acmetrack Limited (the "DPSP") to the Plan did not remain subject to the provisions or trusts applicable to the Acmetrack Plan and the DPSP;
- b. within the meaning of paragraph 79(3)(b) of the Act, the Plan provides for payment of surplus to the Applicant on the wind up of the Plan;
- c. the Applicant's Application to withdraw surplus in accordance with the Surplus Distribution Agreement attached hereto as Annex "A" complies with subsection 78(2) of the Act and clause 8(1)(b) of Regulation 909, R.R.O. 1990;
- d. the Applicant's withdrawal of surplus from the Plan and payment of surplus to the Applicant in accordance with the terms and provisions of the Surplus Distribution Agreement are lawful and permissible under the terms of the Plan, any trust applicable to the Plan, and the Act and Regulations thereunder;

- e. interest on the surplus payments to the Members pursuant to the Surplus Distribution Agreement shall be paid in accordance with the Plan fund rate of return from the date of Plan wind up to the date of payment;
  - f. subject to the interest payments referred to in paragraph 1(e) hereof, the Applicant is and shall be entitled to withdraw surplus from the Plan in accordance with the terms and provisions of the Surplus Distribution Agreement.
2. The Parties consent to an Order by the Tribunal in the form attached hereto as Annex "B."
  3. The Parties shall each bear their own costs.
  4. The Represented Members shall execute and provide to the Applicant a Full and Final Release in the form attached as Annex "C" hereto.
  5. The Parties agree to cooperate to put these Minutes of Settlement into effect and to take such steps as may be necessary to complete this Settlement Agreement.

**DATED** at Toronto this 24th day of October, 2002.

Lynda Ellis,  
Manager Technical Consulting,  
Pension Plans Branch  
Financial Services Commission of Ontario  
on behalf of the Superintendent,  
Financial Services Commission of Ontario

Freya Kristjanson,  
of Borden Ladner Gervais LLP,  
on behalf of the Applicant

Robert Forsyth Q.C.,  
on behalf of the Members Ed Holba and  
Blaine Mitton

**INDEX NO.:**

FST File Number U0202-2002

**DATE OF DECISION:**

November 28, 2002

**PUBLISHED:**

Bulletin 12/2 and FSCO web site

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated October 7, 2002, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the Act;

**REASONS:**

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated October 7, 2002, denying the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:  
**67.-(5)** Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "August 2002 Application"), which was made on the basis of low income, was made within 12 months after the date of a previous successful application (the "December 2001 Application") made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:  
**89.-(4)** Only one application may be made during each 12-month period.

**(5)** An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the August 2002 Application.
4. The Superintendent submits that the December 2001 Application was signed by the Applicant on December 10, 2001. On December 13, 2001, the Superintendent consented to withdrawal of funds from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore, the December 2001 Application was successful.
5. On August 20, 2002, the Applicant signed the August 2002 Application, in which he applied to withdraw funds from his locked-in account on the basis of low income. As this application was made within 12 months after the successful December 2001 Application, which was also made on the basis of low income, the August 2002





Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

6. This Tribunal does not have the authority to direct the Superintendent to allow an application that does not meet the requirements of the Regulation. Although the evidence of financial hardship on the part of the Applicant may be compelling, the August 2002 Application cannot be granted because it fails to meet one of those requirements. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated October 7, 2002, in respect of the August 2002 Application.
7. **However, as of December 10, 2002, 12 months will have passed since the date of the successful December 2001 Application, with the result that a further application for withdrawal of locked-in funds can then be made to the Superintendent. If the circumstances of the Applicant are such that he wishes to do so, a new application can be submitted to the Superintendent on or after December 10, 2002.**

### **ORDER**

**The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated October 7, 2002, directed to the Applicant.**

**DATED** at Toronto, this 28th day of November, 2002.

Mr. C. S. Moore,  
Member, Financial Services Tribunal

**INDEX NO.:**

FST File Number P162-2001

**PLAN:**

O-I Canada Corp. Pension Plan (formerly called the "Consumers Packaging Inc. Pension Plan II"),  
Registration No. 0998682 (the "Plan")

**DATE OF DECISION:**

November 29, 2002

**PUBLISHED:**

Bulletin 12/2 and FSCO web site

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R. S. O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to refuse to approve a partial wind up report filed by Consumers Packaging Inc. on May 19, 2000, with respect to a partial wind up of the **O-I Canada Corp. Pension Plan (formerly called the "Consumers Packaging Inc. Pension Plan II"), Registration No. 0998682 (the "Plan")**, as at May 7, 1997, and a proposal to refuse to register an amendment to such pension plan filed by Consumers Packaging Inc. on May 19, 2000, titled Amendment #2;

**AND IN THE MATTER OF** a Hearing in accordance with subsection 89(8) of the Act;

**BETWEEN:**

**CONSUMERS PACKAGING INC., by its monitor, KPMG INC., On behalf of O-I CANADA CORP.**

**("the Company")**

**Applicant**

- and -

**SUPERINTENDENT OF FINANCIAL SERVICES OF ONTARIO**

**(the "Superintendent")**

**Respondent**

- and -

**UNITED STEELWORKERS OF AMERICA, LOCAL 203G**

**(the "Union")**

**Respondent**

**BEFORE:**

Martha Milczynski  
Chair of the Tribunal  
David Wires  
Member of the Tribunal  
David Short  
Member of the Tribunal

**APPEARANCES:****For the Applicant:**

Mary Picard  
Barbara Grossman

**For the Superintendent of Financial Services:**

Deborah McPhail

**For the United Steel Workers of America, Local 203G:**

Michael Mazzuca

**HEARING HELD:**

July 29 & 31, 2002  
Toronto, Ontario

**REASONS:****Introduction**

Consumers Packaging Inc., by its monitor KPMG Inc., on behalf of O-I Canada Corp. (the "Company"), is the Applicant in this proceeding before the Financial Services Tribunal (the "Tribunal") in respect of the Notice of Proposal dated April 20, 2001 (the "NOP") issued by the Superintendent of Financial Services (the "Superintendent"). O-I Canada Corp. purchased the assets of Consumers Packaging Inc., in August, 2001 — for ease of reference, unless the context requires otherwise, the reference to "Company" shall include both O-I Corp. and Consumers Packaging.

The Company is the administrator of the Consumers Packaging Inc. Pension Plan II (the "Pension Plan" or "Plan") whose hourly paid unionized members were represented by the Respondent, United Steel Workers of America Local 203G (the "Union"). The Superintendent was also a respondent in this hearing.

The NOP set out the Superintendent's refusal to:

- a. approve the partial wind up report filed by the Company on May 19, 2000 (the "2000 Report"); and
- b. register an amendment to the Pension Plan dated May 18, 2000 (the "2000 Plan Amendment").

The 2000 Report and 2000 Plan Amendment were prepared and filed with respect to the partial wind up of the Pension Plan effective May 7, 1997, due to the Company's closure of its plant in Hamilton, Ontario.

At issue is whether the 2000 Plan Amendment is a permitted amendment under the *Pension Benefits Act* ("PBA" or "Act") or is void due to a plan amendment filed by the Company in 1997 that enhanced certain (ancillary) bridge benefits (the "1997 Plan Amendment") which the 2000 Plan Amendment sought to restrict or reduce. The terms of the Plan with either the 1997 or 2000 Plan Amendment will have a corresponding impact on the calculation of liabilities for the purposes of the partial wind up report.

For the reasons set out below, the Tribunal affirms the Superintendent's NOP and finds:

- a. the 1997 Plan Amendment that enhanced the early retirement bridge benefit to be valid and affective; and
- b. the 2000 Plan Amendment void.

**Facts**

This proceeding has a rather complicated and lengthy factual history and context. The matter of the partial wind up of the Plan arising out of the May 1997 plant closure in Hamilton, Ontario has been the subject of two earlier Notices of Proposal issued by the Superintendent. These Notices of Proposal, issued on April 30, 1999, addressed certain inadequacies that the Superintendent found with the first partial wind up report the Company filed in respect of this partial wind up (the "1997 Report"). In this respect, the chronology of events and the various filings made by the Company is important:

- Consumers Packaging Inc. ("Consumers") closed its plant in Hamilton, Ontario on or about May 7, 1997.
- Consumers declared a partial wind up of the Pension Plan effective May 7, 1997 in respect of its employees affected by the plant closure.





- On July 16, 1997, Consumers' board of directors passed a resolution adopting an amendment to the Plan with effect to May 7, 1997 to provide certain enhanced bridge benefits to members who had at least 10 years of continuous service as well as 55 points calculated in age and years of service (the "1997 Plan Amendment" providing for the "Enhanced Bridge").

The Company clearly planned ahead and prepared for the plant closure and partial wind up of the Plan in an organized and comprehensive manner:

- The availability of the Enhanced Bridge was communicated to Plan members even before the amendment had been made — in February 1997, Consumers distributed written statements outlining the benefits that would be provided to those affected by the plant closure.
- In April 1997, representatives of Consumers and the Plan actuaries conducted meetings and presentations with Plan members. The presentation material clearly communicated the Enhanced Bridge.
- By letter dated February 28, 1997, to the Pension Commission of Ontario (the "PCO", and effective July 1, 1998 replaced by the Financial Services Commission of Ontario, ("FSCO")), Consumers submitted copies of the notices sent to Plan members in connection with the upcoming partial wind up of the Plan effective May 7, 1997. The correspondence also requested approval under subsection 70 (3) of the PBA for the payment of pension benefits to all eligible members who elected to retire at any time on or after February 1, 1997.
- PCO approval was granted for the payment of pension benefits by letter dated April 15, 1997.
- Benefits commenced being paid out from the Plan that included the Enhanced Bridge.
- By cover letter dated December 22, 1997, the Plan actuaries on behalf of Consumers, filed among other things, a partial wind up report (the "1997 Report") and a copy of the 1997 Plan Amendment giving effect to the partial wind up and Enhanced Bridge.
- The PCO replied by letter dated April 29, 1998. Among other things, this letter:
  - requested a completed Form of Application ("Form 1.1") for the 1997 Plan Amendment giving effect to the Enhanced Bridge;
  - advised that the 1997 Plan Amendment and 1997 Report did not include plant closure benefits for the purposes of "grow in" under section 74 of the Act; and
  - gave notice that the Union was requesting that certain additional employees be included in the Pension Plan and partial wind-up report (these were replacement "call in" employees who were deemed by the Company to be ineligible for Plan membership).
- By letter dated May 20, 1998, the actuaries, on behalf of Consumers, filed the Form of Application for registration in respect of the 1997 Plan Amendment — two other applications for registration in respect of two other plan amendments were also included in this correspondence.
- The 1997 Plan Amendment was never registered by the Superintendent, the other two plan amendments were registered — the Superintendent also never issued a Notice of Proposal to refuse to register the 1997 Plan Amendment.



- On April 30, 1999, the Superintendent issued a Notice of Proposal to refuse to approve the 1997 Report on the grounds that:
  - a. it did not include the "call in" replacement employees; and
  - b. certain "grow in" benefits required under section 74 of the Act were not provided.
- A second Notice of Proposal was also issued by the Superintendent on April 30, 1999 to order Consumers to include the "call in" employees as members of the Plan.
- Consumers requested hearings before the Tribunal in respect of each of the two Notices of Proposal.
- Each of the "grow in" and "call in" issues was resolved prior to any hearing commencing before the Tribunal. Consumers, the Superintendent and the Union reached a settlement regarding the "call in" issue in December 1999. Pursuant to the terms of the settlement, an Order was issued by the Tribunal on January 10, 2000, requiring Consumers to accept as members of the Plan, those replacement "call in" employees who met certain conditions of Plan eligibility.
- The hearing regarding the "grow in" issue was scheduled to be heard by the Tribunal on March 7, 8 and 9, 2000. On March 1, 2000, however, Consumers advised the Tribunal, the Superintendent and the Union that it was withdrawing its request for hearing.
- On May 19, 2000, Consumers filed the 2000 Report and 2000 Plan Amendment. The 2000 Plan Amendment stated that the 1997 Report and the 1997 Plan Amendment "are of no force and effect, and are hereby revoked and rescinded". The accompanying letter from the Plan actuary stated that the 1997 Report and the 1997 Plan Amendment were of "no

effect" and explained that the 2000 Report and related 2000 Plan Amendment did not provide the Enhanced Bridge.

- The 2000 Plan Amendment sought to revoke or rescind the Enhanced Bridge by restricting eligibility to those members with 10 years of continuous service, 55 points calculated in age and service and who had attained the age of 60 prior to commencing payment of his or her benefit. The 1997 Plan Amendment did not require the attainment of the age of 60 for receipt of the Enhanced Bridge.
- The cover letter referred to above from the Plan actuary that filed the 2000 Report and 2000 Plan Amendment stated further as follows:

"In the 1997 Report, the Company voluntarily proposed to provide enhanced bridge benefits in excess of the requirements of the Act to all Unionized members with 55 points, who had completed 10 years of Continuous Service. The enclosed report does not include such enhancement. The following comments are intended to assist you in understanding the Company's position regarding this issue.

...

Unfortunately, as a result of the additional costs associated with "call in" and "grow in to plant closure" provisions, and given its fiduciary responsibility to ongoing Plan members, the Company can no longer in good faith voluntarily provide this bridge enhancement. Accordingly, such enhancement is no longer proposed. It is not included in the benefits and commuted values contained in the enclosed report.

For those already receiving bridge enhancements to which they are no longer entitled, for purposes of the enclosed report, payment



of the bridge benefit has been assumed to continue up to and including payments due in the month of September 2000. The Company is currently in the process of preparing communication to affected members in this regard."

- Following the filing of the 2000 Report and the 2000 Plan Amendment, Consumers distributed notices dated June 30, 2000, to members of the Plan affected by the partial wind up informing them in general terms of the changes that would be made to their pension benefits pursuant to the 2000 Report. Members who would have been entitled to the Enhanced Bridge under the 1997 Report were told that it would not be provided. Subsequently, however, Consumers informed those members by letter dated August 21, 2000, that notwithstanding the June 30, 2000 letter, their Enhanced Bridge would be paid, "until such time as this issue is resolved with FSCO." Members who have attained the necessary eligibility requirements under the 1997 Plan Amendment have therefore begun to receive, and are still receiving, the Enhanced Bridge.
- On April 20, 2001, the Superintendent issued the NOP on the grounds that the 2000 Report calculated the commuted values for Plan members affected by the plant closure and partial wind-up on the basis of the 2000 Plan Amendment and not the 1997 Plan Amendment.
- On May 17, 2001, the Company requested a hearing before the Tribunal regarding the NOP.

### Consumers Packaging Insolvency And The Sale To O-I Canada Corp.

- On May 23, 2001, the Ontario Superior Court of Justice issued an initial Order in respect of

Consumers Packaging Inc. pursuant to the Companies' Creditors Arrangement Act. The Order appointed KPMG Inc. as "monitor" of the property and to conduct the business of Consumers Packaging Inc.

- On August 31, 2001, the Ontario Superior Court of Justice approved of a sale of certain assets of Consumers Packaging Inc. to a company then known as "3058888 Nova Scotia Corporation", which company is now known as O-I Canada Corp. Pursuant to the sale, the Plan was assigned to O-I Canada Corp.
- By letter dated November 28, 2001, O-I Canada Corp. wrote to counsel to the Superintendent to confirm that O-I Canada Corp. had assumed the rights, obligations and liabilities of Consumers Packaging Inc. regarding the Plan.

### Issues

The Superintendent issued the NOP on the grounds that the 1997 Plan Amendment was valid under section 13 and subsection 19 (3) (b) of the PBA, and that the 2000 Plan Amendment was void pursuant to subsection 14 (1) (c) of the PBA. It was the Superintendent's conclusion that the 2000 Plan Amendment was void because it sought to reduce the amount of the commuted value of the Enhanced Bridge, an ancillary benefit provided by the Plan for which a member or former member had met all eligibility requirements under the Plan necessary to exercise the right to receive payment of the benefit.

The essential issue is therefore, whether in the circumstances of this case, having filed and implemented the 1997 Plan Amendment, the Company has irrevocably bound itself to provide the Enhanced Bridge, or whether because the 1997 Plan Amendment was never registered by the Superintendent, the Company can effec-





tively change its mind due to subsequent cost considerations and provide the more limited bridge benefit proposed in the 2000 Plan Amendment.

The determination of this issue requires the following questions to be answered:

- When is an amendment to a pension plan effective under the Pension Benefits Act?
- Does an amendment need to be registered by the Superintendent to be effective?
- What is the legal effect and status under the PBA of each of the 1997 and 2000 Plan Amendments?

### **Pension Benefits Act**

Counsel for the Company submitted at the hearing, and on a motion to compel answers to interrogatories brought prior to the hearing, that the provisions of the Pension Benefits Act were ambiguous. The Company sought to rely on evidence of the Superintendent's past practice to establish that amendments filed concurrently with wind-up reports could on occasion be amended or withdrawn. It was submitted that this evidence was in aid of interpreting the PBA such that it provided for plan amendments to be binding and effective only on registration, meaning that pending registration, an amendment could be withdrawn — even if implemented.

The Tribunal finds that the provisions of the Pension Benefits Act are clear, express and unambiguous and on that basis denied the motion. Whatever the Superintendent's past or current practice might be is not relevant. The statute is clear on the effect of filing an amendment and provides for it becoming effective, with express provision in the Act for subsequent registration.

The filing and implementation of the 1997 Plan Amendment, is not a case of error in drafting or a need for clarification of a plan amendment —

this is a case of an ancillary benefit improvement that was promised, made, filed and implemented. The Enhanced Bridge became a part of the Plan effective May 7, 1997.

19.01 The Tribunal may issue procedural directions providing for interrogatories that are necessary to:

- (a) clarify evidence filed by a party;
- (b) simplify the issues;
- (c) permit a full and satisfactory understanding of the matters to be considered; or
- (d) expedite the proceeding.

### **Pension Benefits Act — Excerpts**

#### **12. Application for registration of amendment**

(1) [Application for registration of amendment]

The administrator of a pension plan shall apply to the Superintendent, within sixty days after the date on which the pension plan is amended, for registration of the amendment.

#### **(2) Requirements for registration**

An application for registration shall be made by paying the fee established by the Minister and filing, (1997, c. 28, s. 192(1).)

- (a) a certified copy of the amending document;
- (b) certified copies of any other prescribed documents; (1997, c. 28, s. 192(2).)
- (b.1) a certification in a form approved by the Superintendent and signed by the administrator of the pension plan in which the administrator attests that the amendment complies with this Act and the regulations; and (1997, c. 28, s. 192(2).)
- (c) any other prescribed information.



### 13. When amendment effective

(1) [When amendment effective]

An amendment to a pension plan is not effective until the administrator of the plan files an application for registration of the amendment and the application meets the requirements of section 12. (1997, c. 28, s. 193.)

### 14. Reduction of benefits

(1) [Reduction of benefits]

An amendment to a pension plan is void if the amendment purports to reduce,

- (a) the amount or the commuted value of a pension benefit accrued under the pension plan with respect to employment before the effective date of the amendment;
- (b) the amount or the commuted value of a pension or a deferred pension accrued under the pension plan; or
- (c) the amount or the commuted value of an ancillary benefit for which a member or former member has met all eligibility requirements under the pension plan necessary to exercise the right to receive payment of the benefit.

(2) Application of subs. (1)

Subsection (1) does not apply in respect of a multi-employer pension plan established pursuant to a collective agreement or a trust agreement.

(3) *Idem*

Subsection (1) does not apply in respect of a pension plan that provides defined benefits if the obligation of the employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement.

### 17. Issuance of notice of registration

The Superintendent shall issue a notice of registration for each amendment to a pension plan registered under this Act.

### 18. Refusal or revocation of registration

(1) [Refusal or revocation of registration]

The Superintendent may,

...

- (d) refuse to register an amendment to a pension plan if the amendment is void or if the pension plan with the amendment would cease to comply with this Act and the regulations;
- (e) revoke the registration of an amendment that does not comply with this Act and the regulations.

(4) *Idem*

A refusal of registration of an amendment to a pension plan or the revocation of an amendment to a pension plan operates to terminate the amendment as of the date specified by the Superintendent.

### 19. Duty of administrator

(3) *Idem*

The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with,

...

- (b) the filed documents in respect of an application for registration of an amendment to the pension plan, if the application complies with this Act and the regulations and the amendment is not void under this Act.

...

### (5) *Idem*, amendment

The administrator of a pension plan may administer or permit administration of the pension plan and the pension fund in accordance with an amendment pending registration or refusal of registration of the amendment.

It is clear from the PBA provisions above that the administrator of a pension plan has an obligation to administer a pension plan in accordance with filed documents and can implement or make effective plan amendments prior to the issuance of a Notice of Registration by the Superintendent. The Tribunal agrees with the Superintendent's and Union's submission that there is "no magic" in registration.

Provided that the amendment is not void or contrary to the PBA, a plan amendment can be implemented and is thereby binding and enforceable pending registration. Indeed, there is no time frame in the PBA within which the Superintendent must register or refuse to register an amendment.

In this case, the Company promised and implemented the Enhanced Bridge even before filing an application to register the 1997 Plan Amendment, clearly intending it to form part of the Pension Plan.

The Company commenced payment of the Enhanced Bridge then filed the form of application for the registration of the 1997 Plan Amendment and therein certified that the amendment complied with the requirements of the Act. The Company paid the Enhanced Bridge and included it in the calculation of liabilities for the purposes of the 1997 Report, which for other reasons, was not approved. The Company cured those deficiencies but then sought to revoke the Enhanced Bridge.

The Tribunal is satisfied that the application the Company filed for the registration of the 1997 Plan Amendment met the requirements of Section 12 of the Act and that the Enhanced Bridge now forms part of the terms of the Pension Plan.

There was some evidence that the Company filed the application beyond the 60 days after the date on which the Amendment was made and did not request a filing extension. The Tribunal finds this to have been a technical breach cured in any event by the Superintendent's approval for the Company to pay benefits out of the Plan on April 15, 1997, and on the basis of the Superintendent not having issued a Notice of Proposal to refuse registration of the 1997 Plan Amendment following the filing of the board of directors' resolution in December, 1997 and the form of registration (Form 1.1) in May 1998.

The 1997 Plan Amendment is therefore a valid and binding Plan provision pursuant to Section 13(1), 19(3)(b) and 19(5) of the PBA.

With respect to the 2000 Plan Amendment, to the extent that it purports to restrict eligibility to or change the terms of the Enhanced Bridge provided by the Plan, it is void by virtue of section 14(1)(c) of the Act. The 2000 Plan Amendment would reduce the amount or commuted value of an ancillary benefit that is provided by the Plan, as amended by the 1997 Plan Amendment for those members and former members who have met the amended Plan's eligibility requirements necessary to exercise the right to receive payment of the benefit.

### Doctrine of Legitimate Expectation

The Company's motion to compel answers to interrogatories relating to the Superintendent's past practice, in addition to being brought to aid in statutory interpretation, was also to argue





that the doctrine of legitimate expectation applied to the Superintendent and the disposition of this hearing.

The Tribunal denied the Company's motion, but permitted the evidence at the hearing of Mr. Kevin Aseltine, an experienced actuary and Mr. Sheldon Wayne an experienced pension consultant and lawyer. This evidence did not, however, address whether or not Consumers Packaging Inc. had any expectation or understanding regarding the 1997 Plan Amendment and whether it could be withdrawn a number of years after its filing for registration and after its implementation. The evidence was more general and anecdotal in nature. In any event, it is clear that whatever reasonable expectation the Company might have had in relation to the Superintendent's review and approval of its partial wind-up report and plan amendments, the Company's remedies are procedural and cannot affect the substantive rights of third parties.

The rights of pension plan members affected by a partial wind-up cannot be made subject to the expectations of other parties. (See: *Monsanto Canada Inc. v. Superintendent of Financial Services* (2001), 198 D.L.R. (4th) 109 (Ont. Div. Ct.) affirmed by the Court of Appeal for Ontario — November 22, 2002; *Libbey Canada Inc. v. The Crown in Right of Ontario* (Ministry of Labour) et al. (1999), 42 O.R. (3d) 417 (Ont. C.A.); *Ahani v. Canada* (Min. of Citizenship and Culture), [2002] O.J. No. 431 (C.A.).

From time to time parties argue as they did in this case that the absence of a timely precise response to submissions made to FSCO or the practice of FSCO in other cases creates expectations that somehow accrue into substantive rights or obligations independent of the impact on the rights of members of a plan. Applicants ask for extensive discovery of the Commission's

files. The Act and regulations and plan terms define the rights of the parties and they cannot be amended by FSCO administrative practices. If parties are concerned about delay, equivocation or lack of clarity in responses to their submissions, they have their administrative law remedies. Those remedies do not include declarations by the Tribunal that substantive rights that affect the interests of plan members were created or that unrepresented parties had their rights compromised.

The Tribunal also rejects the assertion that the Company was denied procedural fairness or natural justice before the Superintendent. Through its actuaries and advisors, the Company anticipated the concerns the Superintendent would have with the 2000 Plan Amendment and Report, and made submissions together with the filings. The Superintendent's NOP is in any event notice of a proposed or intended decision or order and the matter of whether the NOP should be affirmed has also had a full hearing before the Tribunal.

### Company's Argument for Alternative Remedy

The Company argues in the alternative that the application of the 1997 Plan Amendment should be restricted to those members who qualified for the Enhanced Bridge as at May 18, 2000, the day that the 2000 Plan Amendment was approved by the Consumers Packaging Inc. board of directors.

The rights of the members of the Plan affected by the partial wind-up were, however, crystallized as at the effective date of the wind-up: May 7, 1997. All of the affected members' pension benefits and any other benefits and entitlements are frozen as at that date. This necessarily includes the Enhanced Bridge provided by the 1997 Plan Amendment. Those benefits cannot



be impaired or reduced in any way. To do otherwise would ignore the statutory scheme of minimum pension standards, and the "special solicitude" certain provisions of the Act give to pension plan members who have lost their employment in the precise circumstances presented in this case (see *Firestone Canada Inc. v. Pension Commission of Ontario* (1990), 1 O.R. (3d) 122 (Ont. C.A.)).

### **ORDER**

Accordingly, having found the 1997 Plan Amendment establishing the Enhanced Bridge to be valid, effective and binding upon the Company (the Enhanced Bridge forming part of the Plan), the Tribunal directs the Superintendent to carry out the Notice of Proposal dated April 20, 2001.

The Tribunal remains seized with respect to the matter of costs in the event any party wishes to make a submission.

**DATED** at Toronto this 29th day of November, 2002.

Martha Milczynski  
Chair, Financial Services Tribunal

David Wires  
Member of the Tribunal

David Short  
Member of the Tribunal



**INDEX NO.:**

FST File Number P162-2001

**PLAN:**Retirement Plan for Salaried Employees of  
Marshall Steel Limited and Associated Companies,  
Registration Number 0968081 (the "Plan")**DATE OF DECISION:**

November 29, 2002

**PUBLISHED:**

Bulletin 12/2 and FSCO web site

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, as amended by the Financial Services Commission of Ontario Act, 1997, R.S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Partial Wind-up Report submitted by Marshall-Barwick (formerly Marshall Steel Limited) to the Superintendent of Financial Services relating to the **Retirement Plan for Salaried Employees of Marshall Steel Limited and Associated Companies, Registration Number 0968081 (the "Plan")**;

**AND IN THE MATTER OF** a Hearing in accordance with subsection 89(8) of the Act.

**BETWEEN:**

**MARSHALL STEEL LIMITED AND ASSOCIATED COMPANIES**

**Applicant**

- and -

**SUPERINTENDENT OF FINANCIAL SERVICES OF ONTARIO**

**Respondent**

- and -

**JEFFREY G. MARSHALL**  
**(A FORMER EMPLOYEE OF MARSHALL STEEL LIMITED)**

**Interested Party****BEFORE:**

Ms. M. Elizabeth Greville  
Member of the Tribunal and Chair of the Panel

Ms. Heather Gavin  
Member of the Tribunal and of the Panel

Mr. C.S. (Kit) Moore  
Member of the Tribunal and of the Panel

**APPEARANCES:**

**For Marshall Steel and Associated Companies:**

Mr. Sean Dunphy

**For the Superintendent of Financial Services:**

Ms. Deborah McPhail

**For Jeffrey G. Marshall:**

Mr. Michael Mazzuca

**HEARING DATE:**

September 9, 2002





## REASONS:

### Introduction

Marshall Steel Limited and Associated Companies, (hereafter the "Company") has requested a hearing before the Financial Services Tribunal (the "Tribunal") with respect to a Notice of Proposal dated December 12, 2000 (the "NOP") issued by the Superintendent of Financial Services (the "Superintendent").

The NOP relates to a report prepared on behalf of the Company dated as of August 28, 1992 in respect of a voluntary partial wind-up, (the "Report"). The Report related to the Retirement Plan for Salaried Employees of Marshall Steel Limited and Associated Companies (the "Plan"). The partial wind-up was initiated by the Company in relation to members of the Plan who were employed by the Company at its plant in Milton, Ontario.

On May 22, 1992, the controlling interest in the Company formerly owned beneficially by Jeffrey Marshall and members of his family was purchased by a member of the Canadian Erectors Limited Group in a corporate takeover.

Mr. Marshall was terminated without notice or pay in lieu of notice on May 22, 1992. The Company purported to terminate his employment "for cause." At the time of his termination, he was a member of the Plan.

Jeffrey Marshall had been employed with the Company or its predecessors from 1966. Mr. Marshall's final position with the Company was that of President and Chief Executive Officer as provided in his employment agreement with the Company dated January 1, 1991. At the time of his termination, his office was located in the Company's head office at its plant in Milton, Ontario.

The Company had begun a restructuring of its workforce, including a downsizing at its plant in Milton, in early 1992.

On August 28, 1992, the Company closed its plant in Milton. Head office functions were transferred elsewhere in this time frame.

The Report indicates that the plant shutdown was preceded and followed by a series of lay-offs and terminations of salaried employees that occurred between January 1, 1992 and September 22, 1993. A total of 34 employees were included in the partial wind-up and were therefore eligible for benefits referred to in subsection 70(6) of the Act. Mr. Marshall was not included. The wind-up group was defined in the Report as:

"active or transferred members who terminated either voluntarily or involuntarily (except for just cause) between January 1, 1992 and September 22, 1993 in Ontario or the U.S."

The Superintendent's NOP proposed to refuse to approve the Report on the grounds that Mr. Marshall's employment was terminated during the partial wind-up period. The Company had failed to demonstrate that his termination was not as a result of the closure of the plant in Milton and therefore excluding him from the partial wind-up group was contrary to subsection 70(5) of the Act.

For the reasons set out below, the Tribunal affirms the Superintendent's NOP.

### **Requirements of the Act On Partial Wind-Up**

Section 70(5) of the Act gives the Superintendent the authority to refuse to approve a wind-up report that fails to "protect the interests of the members and former members of the pension plan."



This section applies whether a partial wind-up is initiated voluntarily by the employer under section 68(1) of the Act, or is imposed by order of the Superintendent under section 69(1) of the Act.

In this case, the partial wind-up was initiated by the Company under section 68(1). The Report prepared on behalf of the Company set out the purpose and scope as follows:

### **"Purpose of Valuation**

Marshall Steel Limited (the "Company") closed down its plant and operations in Milton, Ontario effective August 28, 1992.

The Plant shutdown was preceded and was followed by a series of layoffs and terminations of the salaried employees that occurred between January 1, 1992 and September 22, 1993. In addition, Head Office functions were transferred to the Laval operation and to the Company's new parent, Canerector Inc. over the same period of time. By September 22, 1993, no Ontario employees remained in the Plan. In addition one Ontario member had transferred to a U.S. plant. That U.S. operation was sold in early 1993.

As a result of these events, a partial wind-up of the Retirement Plan for Salaried Employees of Marshall Steel Limited and Associated Companies (the "Plan") is required."

As noted above, the partial wind-up group was defined in the Report as all active or transferred members who terminated voluntarily or involuntarily between January 1, 1992 and September 22, 1993 except for those terminated "for just cause." The Report did not name Mr. Marshall, but in correspondence between the Company and the Pension Officer at the Pension Commission of Ontario ("PCO") as it then was, the PCO was advised of Mr. Marshall's

exclusion because the Board of Directors had passed a motion that Mr. Marshall be terminated for "cause."

Without notice to Mr. Marshall, the then Superintendent, by letter to the Company dated December 1, 1995, authorized the distribution of assets in the Plan as provided in the Report. The letter, however, did not deal with the issue of surplus assets:

"... the proposals with respect to the distribution of surplus assets attributable to members, former members and other persons affected by the partial wind-up will be dealt with separately.

When the proposals for the distribution of the surplus assets are found to be acceptable, I shall proceed with my approval of the wind-up report."

### **Exclusion of Mr. Marshall from the Partial Wind-Up Group**

The Company made submissions to the Tribunal that Mr. Marshall was properly excluded from the partial wind-up group because his termination was not a result of the closure of the plant.

In support of these submissions, the Company argued that the termination of Mr. Marshall was a direct result of a change of control of the Company, not of the plant closure or consequential transfer of the Company's head office, that in any event, both the closure and transfer occurred after his dismissal, and/or that Mr. Marshall was terminated for just cause.

The Company further argued that since the partial wind-up was initiated under Section 68(1) of the Act, the Company was free in the first instance to establish the criteria for members and former members to be included in the eligible group.



In the NOP it is stated that the Company failed to demonstrate that Mr. Marshall's termination was not "a result of" the plant closure.

The Company contended that because the partial wind-up application was governed by Section 68(1) of the Act, the Tribunal was not required to consider the operation of Section 69(1) of the Act, and in particular clause 69(1)(d) which states that the Superintendent may require a wind-up if:

"(d) a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer;"

However, the Company submitted that because the Superintendent's stated reason in the NOP for proposing to reject the Report mirrored the "as a result of" language in clause 69(1)(d), case law applicable to that clause could be considered. In this regard, the Company cited *Imperial Oil Ltd. vs. Ontario (Superintendent of Financial Pensions)* (1996) 15 C.C.P.B. 31 (PCO), p. 44-45 affirmed (1997), 16 C.C.P.B. 93 (Ont. Div., CT.)) in support of the contention that under clause 69(1)(d) of the Act, the partial wind-up group should include members who are affected by the partial wind-up or who have ceased to be employed "as a direct result of" discontinuance of or reorganization of the business.

In that case, the issue was whether a former officer should have been included in the partial wind-up group even though his employment was terminated outside the wind-up period.

However, the circumstances of this case are that Mr. Marshall was terminated within the partial wind-up period defined by the Company in the Report. The PCO, in the case of *Imperial Oil Retirement Plan* (1988) dealt with the issue of a business reorganization within the meaning of

clause 69(1)(d) of the Act. With respect to the composition of the partial wind-up group, the PCO held:

"The reason that prompts the reorganization may be cost cutting, bench marking or cyclical employment patterns due to price fluctuations but whatever the underlying cause, it is the fact of the reorganization that is of legal significance.

Did the workforce reduction result from these activities? Again, we answer "yes". Are we inclined to force the Superintendent to consider each termination over the 3 year period (of the reorganization) to ensure that the driving force was the reorganization? No. The amount of resources to do that would be enormous and it is not clear that accurate information could even be obtained. For example, if a lower performing employee is let go when the restructuring takes place, is the termination deemed to be a result of performance or the restructuring? If the employer and employee differed in their views as to what was the dominant reasons, how would the dispute be resolved? This simple example illustrates the futility of such an approach. ... The information given by Imperial Oil itself shows that the terminations took place contemporaneous with the reorganization and were related to the activities we have found amount to a reorganization. There is no need to go behind that information."

*Imperial Oil Limited Retirement Plan* (1988), May 27, 1996, DEC-34 (PCO), at pp 7-8.

This decision, which was affirmed on appeal to the Divisional Court and the Court of Appeal, supports the proposition that if the termination of employment occurred during the partial wind-up period, it is deemed to be as a result of the events giving rise to the partial wind-up.





The Company's second basis for excluding Mr. Marshall is that he was terminated for just cause. In 1992, Mr. Marshall commenced a wrongful dismissal action against the Company. In 1998, a Full and Final Mutual Release ("Release") was concluded between Mr. Marshall and the Company in relation to that proceeding. In the action, Mr. Marshall did not in his statement of claim raise any issues in relation to the Plan or to his entitlements or potential entitlements under the Act. Consequently, the Release is not related to the subject matter of these proceedings. Moreover, Mr. Marshall clearly meets the definition of "member" and "former member" of the Plan during the periods relevant to this case. Whether or not he was terminated for cause, he is entitled to the protection and rights extended by the Act to all pension plan members and former members, including the right to have his interests protected by the Superintendent pursuant to subsection 70(5).

Further, as the PCO noted, even if a member's performance is an issue, the pension adjudicator cannot embark upon an inquiry as to the "dominant reason" for the termination.

On the face of the Report, the Company clearly made a decision to define the partial wind-up group in a manner that included individuals who were terminated prior to the actual plant closure by establishing the relevant period as between January 1, 1992 and September 22, 1993. Mr. Marshall's employment was clearly terminated within this period, contemporaneously with the restructuring of the workforce and transfer of head office functions.

### **Onus of Proof**

The Company also made submissions that because the partial wind-up was Company-initiated under Section 68(1), the onus of proof with respect to whether Mr. Marshall should be

included in the partial wind-up group rests with the Superintendent and/or Mr. Marshall.

However, Section 70 of the Act places the responsibility on the administrator of a pension plan to file a wind-up report and to satisfy the Superintendent that the requirements specified in that section, including subsection 70(5), have been met before the Superintendent's approval will be granted. In the partial wind-up application that is the subject of the case, then, the onus rests with the Company to establish that the Report meets the requirements of the Act, including whether Mr. Marshall is properly excluded from the wind-up group. Section 70 applies to partial wind-ups governed by both Section 68(1) and Section 69(1).

### **Application of the Doctrine of *Functus Officio***

The Company has made submissions that the Superintendent lacked jurisdiction to issue the NOP on the basis that the Superintendent was *functus officio*.

In support of their position, they submitted that the letter of December 1, 1995 from the then Superintendent which authorized the distribution of non-surplus assets of the Plan pursuant to the terms of the Report, is tantamount to approval of the Report, except in relation to surplus.

It is well established practice in partial wind-up applications that the Superintendent:

- conditionally approves the distribution of basic benefit entitlements, and
- delays final approval of the report until the issue of any surplus assets associated with the particular partial wind-up has been resolved.

Final approval is not granted until all relevant assets (including surplus) and liabilities have been properly dealt with.



The Superintendent's letter of December 1, 1995 is consistent with this process. As already noted above, the then Superintendent wrote that when the proposals for the distribution of the surplus assets were found to be acceptable, he would proceed with approval of the wind-up report.

This statement clearly illustrates that a final decision had not been made by the Superintendent concerning the approval of the Report. Consequently, the doctrine of *functus officio* does not apply in the circumstances of this case.

### **ORDER**

Accordingly, the Tribunal affirms the Superintendent's NOP and directs the Company as administrator to file a revised partial wind-up report that includes Mr. Marshall in the partial wind-up group.

The Tribunal will remain seized for the purposes of considering the parties' request for costs, such request and submissions to be made in writing within 30 days of this order.

**DATED** at Toronto, Ontario, this 29th day of November, 2002.

Ms. M. Elizabeth Greville

Member of the Tribunal and Chair of the Panel

Mr. C.S. (Kit) Moore

Member of the Tribunal and of the Panel

Ms. Heather Gavin

Member of the Tribunal and of the Panel



**INDEX NO.:**

FST File Number U0206-2002

**DATE OF DECISION:**

December 17, 2002

**PUBLISHED:**

Bulletin 12/2 and FSCO web site

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c.P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated October 21, 2002, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the Act;

**REASONS:**

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated October 21, 2002 that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

**67.B(5)** Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if

the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "September Application"), which was made on the basis of low income, was made within 12 months after the date of another successful application (the "May Application") made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

**89.B(4)** Only one application may be made during each 12-month period.

**(5)** An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the September Application.
4. The Superintendent submits that the May Application was signed by the Applicant on May 24, 2002. On June 5, 2002, the Superintendent consented to withdrawal of the amount requested, on the basis of the Applicant's low income. Therefore, the May Application was a successful application.
5. On September 17, 2002, the Applicant signed the September Application, in which he applied to withdraw \$16,000 from his locked-in account on the basis of low income. As this application was made within 12 months after the successful May





Application, which was also on the basis of low income, the September Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

6. The evidence of financial hardship on the part of the Applicant is compelling in this situation, but this Tribunal does not have authority to direct the Superintendent to allow an application for a withdrawal from a locked-in account that does not meet the requirements of the Regulation. In this case, the September Application cannot be granted because it clearly fails to meet one of those requirements.
7. If in May 2003, 12 months after the date of the successful May Application, the circumstances of the Applicant are such that he could meet the qualifications for reliance on low income, a further application for withdrawal of locked-in funds can then be made to the Superintendent. Prior to that time, the Superintendent would have authority to consider the merits of a financial hardship application submitted on one of the prescribed grounds of financial hardship other than low income.
8. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated October 21, 2002 in respect of the September Application.

### **ORDER**

**The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated September 21, 2002, directed to the Applicant.**

**DATED** at Toronto, this 17th day of December, 2002.

Mr. Kit Moore

Member, Financial Services Tribunal



**INDEX NO.:**

FST File Number U0205-2002

**DATE OF DECISION:**

December 20, 2002

**PUBLISHED:**

Bulletin 12/2 and FSCO web site

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c.P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated October 7, 2002, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the Act;

## **REASONS:**

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated October 7, 2002, denying the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

**67.-(5)** Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if

the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "Current Application"), which was made on the basis of low income, was made within 12 months after the date of a previous successful application (the "Previous Application") made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:  
**89.-(4)** Only one application may be made during each 12-month period.  
**(5)** An unsuccessful application is not counted for the purposes of subsection (4).
3. The issue to be determined by the Tribunal, based on written submissions from the Applicant and Superintendent, is whether or not the Superintendent should have consented to the Current Application.
4. The Superintendent submits that the Previous Application was signed by the Applicant on August 2, 2002, resulting in the Superintendent's consent to withdrawal of funds from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore, the Previous Application was successful.
5. On August 27, 2002, the Applicant signed the Current Application, requesting consent to withdraw funds from her locked-in account on the basis of low income. As this



application was made within 12 months after the successful Previous Application, which was also made on the basis of low income, the Current Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

6. In her submissions to the Tribunal, the Applicant presented compelling evidence of her financial hardship, and has clearly explained the misunderstandings that led to insufficient funds being requested in the Previous Application. However, we must agree with the position stated by the Superintendent regarding these issues. No matter how serious the Applicant's financial hardships and misunderstandings may be, this Tribunal has no authority to direct the Superintendent to allow an application that does not meet the requirements of the Regulation. The Current Application cannot be granted because it fails to meet one of those requirements, in that a previous application was made within the preceding 12 months, on the same basis of low income circumstances. The Tribunal cannot waive this Regulation in this situation, nor can the Tribunal direct the Superintendent to act contrary to this Regulation.
7. The Applicant could, of course, make a further application, without waiting for the expiry of the 12-month period from the date of the Previous Application, **if such an application could be put on the basis of one of the other criteria of financial hardship (i.e. other than low income), as prescribed by the Regulation.** For example, the Applicant may wish to make a further application if she has received a written demand for payment of rent owed, and needs funds to avoid the risk of eviction from her rented

residence. Then, even if the 12-month period has not expired, the Superintendent may have authority to consider such an application on its merits.

8. In the circumstances, because the Current Application was made within 12 months after the Previous Application made on the basis of low income, and because the Current Application was also based on low income circumstances, the Tribunal must affirm the Superintendent's Notice dated October 7, 2002 in respect of the Current Application.

### **ORDER**

**The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated October 7, 2002, directed to the Applicant.**

**DATED** at Toronto, this 20th day of December, 2002.

Mr. Kit Moore  
Member, Financial Services Tribunal



**INDEX NO.:**

FST File Number U0209-2002

**DATE OF DECISION:**

December 20, 2002

**PUBLISHED:**

Bulletin 12/2 and FSCO web site

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c.P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated October 21, 2002, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the Act;

**REASONS:**

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated October 21, 2002, denying the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

**67.-(5)** Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if

the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "Current Application"), which was made on the basis of low income, was made within 12 months after the date of a previous successful application (the "Previous Application") made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

**89.-(4)** Only one application may be made during each 12-month period.

**(5)** An unsuccessful application is not counted for the purposes of subsection (4).

3. As confirmed in a pre-hearing telephone conference with the Applicant and counsel for the Superintendent on December 17, 2002, the issue to be determined by the Tribunal, based on written submissions from the Applicant and Superintendent, is whether or not the Superintendent should have consented to the Current Application.
4. The Superintendent submits that the Previous Application was signed by the Applicant on July 3, 2002. On July 30, 2002, the Superintendent consented to withdrawal of funds from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore, the Previous Application was successful.



5. On August 29, 2002, the Applicant signed another application, which was amended by the Applicant's signature dated September 23, 2002, resulting in the Current Application to withdraw funds from his locked-in account on the basis of low income. As this application was made within 12 months after the successful Previous Application, which was also made on the basis of low income, the Current Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.
6. In his submissions to the Tribunal, the Applicant presented compelling evidence of his financial hardship resulting from accumulated credit card debts. However, no matter how serious these financial hardships may be, this Tribunal does not have authority to direct the Superintendent to allow an application that does not meet the requirements of the Regulation. The Current Application cannot be granted because it fails to meet one of those requirements, in that a previous application was made within the preceding 12 months, on the same basis of low income circumstances. The Tribunal cannot waive this Regulation in this situation, nor can the Tribunal direct the Superintendent to act contrary to this Regulation.
7. The Applicant could, of course, make a further application, without waiting for the expiry of the 12-month period from the date of the Previous Application, **if such an application could be put on the basis of one of the other criteria of financial hardship (i.e. other than low income), as prescribed by the Regulation.** For example, the Applicant may wish to make a further application if he has received a written demand for payment

of rent owed, and needs funds to avoid the risk of eviction from his rented residence. Then, even if the 12-month period has not expired, the Superintendent may have authority to consider such an application on its merits.

8. In the circumstances, because the Current Application was made within 12 months after the Previous Application made on the basis of low income, and because the Current Application was also based on low income circumstances, the Tribunal must affirm the Superintendent's Notice dated October 21, 2002 in respect of the Current Application.

### **ORDER**

**The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated October 21, 2002, directed to the Applicant.**

**DATED** at Toronto, this 20th day of December, 2002.

Mr. Kit Moore

Member, Financial Services Tribunal

**INDEX NO.:**

FST File Number U0200-2002

**DATE OF DECISION:**

December 23, 2002

**PUBLISHED:**

Bulletin 12/2 and FSCO web site

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** A Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated September 23, 2002, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the Act;

**REASONS:**

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated September 23, 2002 that denied the Applicant access to funds held in a locked-in account (in this case, the Applicant's life income fund). The Applicant had applied to withdraw these funds pursuant to subsection 67(5) of the Act, which reads as follows:

**67. – (5)** Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if

the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that the requirements of subsection 88(2) of Regulation 909, as amended, to the Act (the "Regulation") do not permit a withdrawal of any amount in this case.
3. An application for withdrawal based on financial hardship is subject to the conditions and requirements prescribed in sections 83 through 89 of the Regulation.
4. In this case, the application to the Superintendent under subsection 67(5) of the Act was based on the circumstances prescribed in paragraph 87(1)7 of the Regulation. The relevant sections for purposes of an application based on paragraph 87(1)7 of the Regulation are:

**88(2)** Subject to section 89...the owner is entitled to withdraw an amount calculated using the formula,  $A - (B - C) = D$ , in which "A" is the amount the owner applies to withdraw;

"B" is the market value of all assets of the owner...

"C" is the total of the liabilities of the owner...

"(B-C)" cannot be less than 0;

"D" is the amount the owner is entitled to withdraw, net of any withholding tax and fee.





**89(6)** The amount the owner may apply to withdraw under section 88 is the amount by which "E" exceeds "F" where,

"E" is 50 per cent of the Year's Maximum Pensionable Earnings (YMPE) for the year in which the application is signed; and

"F" is 75 per cent of the owner's expected total income from all sources before taxes for the 12-month period following the date of signing the application.

5. Based on the information provided by the Applicant in his application dated June 22, 2002, the amount that the Applicant is entitled to withdraw under section 88 of the Act is \$6,050.00 (calculated in accordance with subsection 89(6) of the Act). This amount is "A" in the formula described in subsection 88(2) of the Act.
6. In this case, the formula in subsection 88(2) of the Regulation result in no amount being eligible for withdrawal, as the calculation would be:  $\$6,050.00 - (\$15,000 - \$500) = 0$ . (The calculation cannot result in a negative amount.)
7. As a result, the application does not meet the requirements of subsection 67(5) of the Act. The Tribunal does not have the authority to direct the Superintendent to allow an application that does not meet the requirements of the Regulation. Although the evidence of financial hardship on the part of the Applicant may be compelling, the application in this case cannot be granted because it does not meet those requirements and therefore the Superintendent's refusal is affirmed.

## **ORDER**

**The Superintendent's Notice of Proposal to Refuse to Consent, dated September 23, 2002, is affirmed and this application is dismissed.**

**DATED** at Toronto this 23rd day of December, 2002.

Mr. Paul W. Litner Member,  
Financial Services Tribunal



**INDEX NO.:**

FST File Number U0211-2003

**DATE OF DECISION:**

February 19, 2003

**PUBLISHED:**

Bulletin 12/2 and FSCO web site

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c.P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent") on January 6, 2003 with respect to an application for withdrawal of money from a life income fund, locked-in retirement income fund (a "locked-in account") based upon financial hardship;

**AND IN THE MATTER OF** a Request for Hearing under subsection 89(8) of the Act;

**REASONS:**

1. The Applicant applied to withdraw \$100,000 from his locked-in account.
2. On January 6, 2003, the Superintendent consented to withdrawal of funds totaling \$4,832.40 from his locked-in account, based upon an application dated September 16, 2002, as submitted by the Applicant.
3. The Applicant in this matter requested a hearing in respect to the Superintendent's Notice of Proposal to Refuse to Consent dated January 6, 2003 for \$95,467.60.
4. Subsection 87(5) of Regulation 909 (the "Regulation") sets out the amount an Applicant may apply to withdraw under paragraph 2 of subsection 87 (1) of the Regulation.

The owner of the locked-in account may apply for one or both of the following:

- (a) consent to withdraw an amount sufficient to pay arrears and bring the debt into good standing;
  - (b) consent to withdraw:
    - (i.) a lump sum covering twelve monthly debt payments, or
    - (ii.) twelve monthly installments, each to cover one monthly debt payment.
5. The Applicant submitted detailed information of current assets held in his locked-in account.
  6. The Applicant requested an amount to pay off an amount greater than the entire mortgage, which included legal expenses and other expenses.
  7. The Applicant submitted information pertaining to a demand for mortgage arrears from the mortgage holder (which is the Applicant's sister) in the amount of three months. Monthly arrears total \$322.16.
  8. As stated in Point 4 of this decision, the Act states that the Applicant may apply for the actual arrears and/or twelve monthly debt payments. The debt of three-month arrears and twelve monthly debt payments total \$4832.40.
  9. As a result, the application does not meet the requirements of subsection 87 (5) of the Regulation. The Tribunal does not have the authority to direct the Superintendent to allow an application that does not meet the



strict requirements of the Regulation. As such, the Superintendent's refusal is affirmed.

### **ORDER**

**The Superintendent's Notice of Proposal to Refuse to Consent, dated January 6, 2003 is affirmed and this application is dismissed.**

**DATED** at Toronto this 19th day of February, 2003.

Kevin G. Ashe

Member, Financial Services Tribunal



**INDEX NO.:**

FST File Number U0215-2003

**DATE OF DECISION:**

March 5, 2003

**PUBLISHED:**

Bulletin 12/2 and FSCO web site

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated January 20, 2003, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the Act;

**REASONS:**

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated January 20, 2003, that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:  
**67.-(5)** Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if

the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "December 12, 2002 Application"), which was made on the basis of low income, was made within 12 months after the date of another successful application (the "August 2002 Application") made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:  
**89.-(4)** Only one application may be made during each 12-month period.  
**(5)** An unsuccessful application is not counted for the purposes of subsection (4).
3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the December 12, 2002 Application.
4. The August 2002 Application was signed by the Applicant on August 8, 2002. On August 23, 2002, the Superintendent consented to withdrawal of funds from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore the August 2002 Application was a successful application.
5. On December 12, 2002, the Applicant signed the December 12, 2002 Application, in which he applied to withdraw additional funds from his locked-in account on the basis of low income. As this application was



made within 12 months after the successful August 2002 Application, which was also based on low income, the December 12, 2002 Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

6. This Tribunal does not have the authority to direct the Superintendent to allow an application for a withdrawal from a locked-in account that does not meet the requirements of the Regulation. Although the evidence of financial hardship on the part of the Applicant may be compelling, the December 12, 2002 Application cannot be granted because it fails to meet one of those requirements. If in August 2003, 12 months after the date of the successful August 2002 Application, if the circumstances of the Applicant are such that he wishes to do so, a further application for withdrawal of locked-in funds may be submitted for consideration by the Superintendent.
7. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated January 20, 2003, in respect of the December 12, 2002 Application.

### **ORDER**

**The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated January 20, 2003, directed to the Applicant.**

**DATED** at Toronto, this 5th day of March, 2003.

Mr. J. P. Martin  
Member, Financial Services Tribunal



**INDEX NO.:**

FST File Number U0212-2003

**DATE OF DECISION:**

March 10, 2003

**PUBLISHED:**

Bulletin 12/2 and FSCO web site

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent") on January 6, 2003 with respect to an application for withdrawal of money from a life income fund, locked-in retirement account (a "locked-in account") based upon financial hardship;

**AND IN THE MATTER OF** a Request for Hearing under subsection 89(8) of the Act;

**REASONS:**

1. The Applicant applied to withdraw \$17,225 from his locked-in account based upon low income in an application dated November 13, 2002 and amended on November 24, 2002.
2. On January 6, 2003, the Superintendent issued a Notice of Proposal to Refuse to Consent to the application. The Superintendent stated that he does not have the authority under law to consent to the application as the Applicant's and spouse's net assets exceed the amount he may apply to withdraw.

3. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated January 6th, 2003.
4. Section 67(1) of the Pension Benefits Act, R.S.O. 190, c. P.8, generally prohibits the commutation or surrender of a pension, deferred pension, pension benefit, annuity or prescribed retirement savings arrangement. Section 67(5) of the Act provides an exception to the rule in circumstances of financial hardship.
5. Subsection 87(1) of Regulation 909, R.R.O. 1990, as amended (the "Regulation") prescribes the circumstances of financial hardship in which the Superintendent may consent to such applications. As noted in Point 1, the application was based on low income. Paragraph 7 of subsection 87(1) of the Regulation states that:  
  
The owner's expected total income from all sources before taxes for the 12-month period following the date of signing the application is 66 2/3 per cent or less of the Year's Maximum Pensionable Earnings for the year in which the application is signed.
6. Section 88(2) of the Regulation sets out the formula for determining the amount the owner (the Applicant in this case) may apply to withdraw, as follows:  $A - (B - C) = D$ .  
"A" is the amount the owner may apply to withdraw.  
"B" is the market value of all assets of the applicant and the spouse...





"C" is the total of all liabilities of the applicant and spouse....

"(B-C)" is the net assets of the applicant and spouse.

"D" is the amount an applicant is ultimately entitled to withdraw.

7. Based on the information provided by the Applicant in his application of November 13, 2002 and amended on November 24, 2002, the amount the Applicant is entitled to withdraw is "D" as referenced above. The amount the applicant may apply to withdraw is "A", \$13,250. The Applicant and spouse's net assets, "B-C", are \$14,030. The amount the Applicant is entitled to withdraw for the purposes of subsection 88(2) of the Regulation, "D" is \$0. (the calculation cannot result in a negative amount).
8. The Applicant submits that the RRSP of his spouse should not be included in the calculation. Subsection 88(2) set out several types of assets to be excluded from the calculations of net assets, but the applicant or spouse's RRSP is not one mentioned for exclusion in the Regulation.
9. As a result, the application does not meet the requirements of subsection 67(5) of the Act. The Tribunal does not have the authority to direct the Superintendent to allow an application that does not meet the strict requirements of the Regulation. As such, the Superintendent's refusal is affirmed.

## **ORDER**

**The Superintendent's Notice of Proposal to Refuse to Consent, dated January 6, 2003, is affirmed and this application is dismissed.**

**DATED** at Toronto this 10th day of March, 2003.

Kevin G. Ashe

Member, Financial Services Tribunal



**INDEX NO.:**

FST File Number U0216-2003

**DATE OF DECISION:**

March 18, 2003

**PUBLISHED:**

Bulletin 12/2 and FSCO web site

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c.P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated January 20, 2003, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the Act;

**REASONS:**

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated January 20, 2003, denying the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

**67.-(5)** Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if

the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "Current Application"), which was dated December 12, 2002 and was made on the basis of low income, was made within 12 months after the date of a previous successful application (the "Previous Application"), which was dated August 8, 2002 and was also made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

**89.-(4)** Only one application may be made during each 12-month period.

**(5)** An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal, based on written submissions from the Applicant and Superintendent, is whether or not the Superintendent should have consented to the Current Application.

4. The Applicant states that his most recent successful application based on low income was the Previous Application signed by the Applicant on August 8, 2002.

5. On December 12, 2002, the Applicant signed the Current Application, requesting consent to withdraw funds from his locked-in account on the basis of low income. As this application was made within 12 months after the successful Previous



Application, which was also made on the basis of low income, the Current Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

6. In his submissions to the Tribunal, the Applicant presented additional evidence of his financial hardship, including copies of an unpaid utilities bill and a demand from his landlord for unpaid rent. However, no matter how serious the Applicant's financial hardships are, this Tribunal has no authority to direct the Superintendent to allow an application that does not meet the requirements of the Regulation. The Current Application cannot be granted because it fails to meet one of those requirements, in that a previous application was made within the preceding 12 months, on the same basis of low income circumstances. The Tribunal cannot waive this Regulation in this situation, nor can the Tribunal direct the Superintendent to act contrary to this Regulation.
7. Regarding the possibility of the Applicant making another application now, on the basis of the demand from his landlord for rental arrears, the Superintendent submits that the Applicant cannot apply on this basis until July 2003, 12 months after the date of another previous successful application made in 2002 on this basis.
8. The Tribunal affirms the Superintendent's Notice to Propose to Refuse to Consent dated January 20, 2003, regarding the Current Application.

### **ORDER**

**The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated January 20, 2003, directed to the Applicant.**

**DATED** at Toronto, this 18th day of March, 2003.

Mr. Kit Moore

Member, Financial Services Tribunal





**INDEX NO.:**

FST File Number U0213-2003

**DATE OF DECISION:**

March 24, 2003

**PUBLISHED:**

Bulletin 12/2 and FSCO web site

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c.P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated January 21, 2003, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the Act;

**REASONS:**

1. The applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated January 21, 2003, denying the Applicant access to funds associated with a locked-in account. The applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

**67.(5)** Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if

the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that the application (the "Current Application") made on the basis of low income, is contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

**89.(4)** Only one application may be made during each 12 month period.

**(5)** An unsuccessful application is not counted for the purposes of subsection (4).
3. The issue to be determined by the Tribunal, based on written submissions from the Applicant and the Superintendent, is whether or not the Superintendent should have consented to the Current Application (dated December 5, 2002).
4. The Superintendent submits that the Applicant signed a Previous Application on May 29, 2002 resulting in the Superintendent's consent to the withdrawal of funds from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore, the Previous Application was successful.
5. On December 5, 2002, the Applicant signed the Current Application, requesting consent to withdraw funds from his locked-in account on the basis of low income. As this application was made within 12 months after the successful Previous Application,



(which was also made on the basis of low income), the Current Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

6. This Tribunal does not have the authority to direct the Superintendent to allow an application for a withdrawal from a locked-in account that does not meet the requirements of the Regulation. Although the evidence of financial hardship on the part of the Applicant may be compelling, the December 2002 application cannot be granted because it fails to meet the time requirement in the regulations.
7. In the circumstances the Tribunal must affirm the Superintendent's Notice dated January 21, 2003.

### **ORDER**

**The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated January 21, 2003, directed to the Applicant.**

**DATED** at Toronto, this 24th day of March, 2003.

Ms. Heather Gavin  
Member, Financial Services Tribunal



**INDEX NO.:**

FST File Number U0214-2003

**DATE OF DECISION:**

March 24, 2003

**PUBLISHED:**

Bulletin 12/2 and FSCO website

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c.P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated December 20, 2002, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the Act;

**REASONS:**

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated December 20, 2002, that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:  
**67.-(5)** Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if

the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "Current Application" dated November 27, 2002), which was made on the basis of low income, was made within 12 months after the date of another successful application (the Previous Application dated June 2002) made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:  
**89.-(4)** Only one application may be made during each 12-month period.  
**(5)** An unsuccessful application is not counted for the purposes of subsection (4).
3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the November 27, 2002 Application.
4. The June 2002 Application was signed by the Applicant on June 27, 2002. On July 18, 2002, the Superintendent consented to withdrawal of funds from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore the June 2002 Application was a successful application.
5. On November 27, 2002, the Applicant signed the November 27, 2002 Application, in which he applied to withdraw additional funds from his locked-in account on the basis that he believed that he had overesti-





mated his projected income in the June 2002 Application and therefore received less than he was entitled to receive. There is nothing in the Regulation which allows an Applicant to make a second application on the same ground of financial hardship or retroactively amend a successful application after a consent has been issued on the grounds that insufficient funds were originally requested. As this application was made within 12 months after the successful June 2002 Application, which was based on low income, the November 27, 2002 Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

6. The Tribunal must agree with the position stated by the Superintendent regarding these issues. No matter how serious the Applicant's financial hardships and misunderstandings may be, this Tribunal has no authority to direct the Superintendent to allow an application that does not meet the requirements of the Regulation. The November 27, 2002 Application cannot be granted because it fails to meet one of those requirements, in that a previous successful application (June 2002) was made within the preceding 12 months, on the same basis of low income circumstances. The Tribunal cannot waive this Regulation in this situation, nor can the Tribunal direct the Superintendent to act contrary to this Regulation.
7. In the circumstances, the Tribunal must affirm the Superintendent's Notice of Proposal to Refuse to Consent, dated December 20, 2003, in respect of the November 27, 2002 Application.

### **ORDER**

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated December 20, 2002, directed to the Applicant.

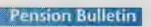
**DATED** at Toronto, this 24th day of March, 2003.

Mr. J. P. Martin

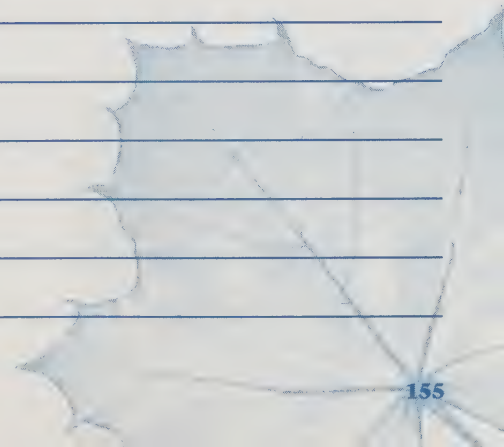
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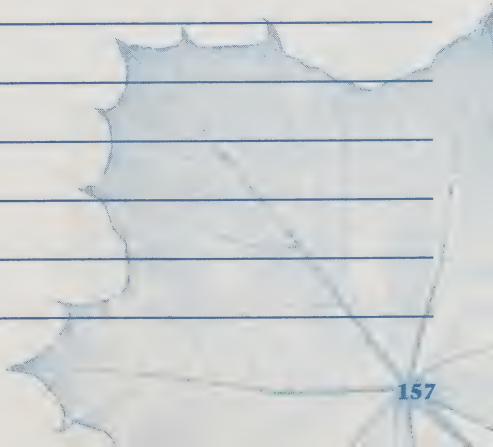


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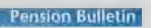


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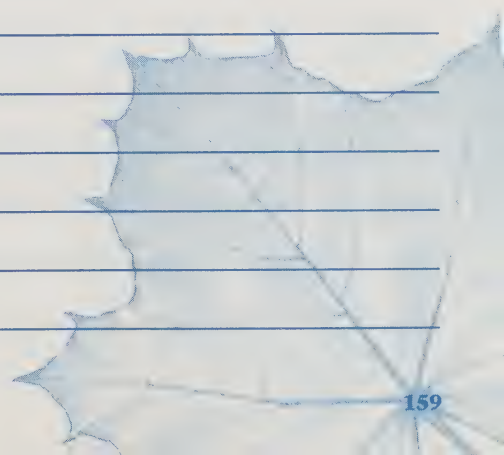
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## This image depicts a single sheet of white paper with horizontal blue lines, resembling notebook paper. The lines are evenly spaced and run across the width of the page. In the bottom right corner, there is a small, irregularly shaped piece of torn, light-colored material, possibly a piece of tape or a scrap of paper, which is partially overlapping the lined area. The rest of the page is empty.



## This image shows a single sheet of white paper with horizontal blue lines, typical of notebook paper. The lines are evenly spaced and run across the width of the page. In the bottom-left corner, there is a small, light-colored object that appears to be a piece of a leaf or a small plant stem, partially obscuring the lines. The rest of the page is empty.



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The Editor, *Pension Bulletin*  
Financial Services Commission of Ontario  
5160 Yonge Street, 17th Floor  
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# PENSION BULLETIN

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*The Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 as amended, the Pension Benefits Act, R.S.O. 1990, c. P.8 as amended, R.R.O. 1990, Reg. 909 as amended, the terms of the pension plan and trust, if any, and the policies, procedures and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.*

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## GENERAL ANNOUNCEMENTS

### Monsanto Update

On June 5, 2003, the Supreme Court of Canada granted leave to appeal the November 22, 2002 *Monsanto* decision of the Ontario Court of Appeal. The Court of Appeal decision had affirmed an earlier decision by the Ontario Divisional Court that supported the Superintendent's position that under the Ontario *Pension Benefits Act*, surplus assets related to a partial wind up must be distributed at the time of the partial wind up of the pension plan.

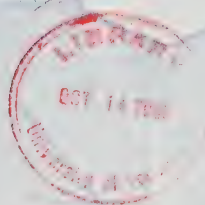
The decision of the Supreme Court of Canada to hear the appeal means that until court proceedings are final, the Superintendent will not be taking any specific action to require the distribution of surplus assets related to partial wind ups. Until that time, plan administrators must ensure that adequate assets are maintained in the pension plan to meet their obligations if the Court of Appeal's decision is upheld.

### Pension Division Staff Changes

Robin Gray has accepted the assignment of Senior Pension Officer.

Dillon DeCoteau has accepted the contract position of Pension Officer. Michelle Harding and Lisette Caron have accepted the contract positions of Assistant Pension Officer. Deana Stuckless and Jason Gartshore accepted the positions of Pension Analyst.

Joey Shiner assumes the role of Compliance Assistant. Douglas Malone accepted the position of Senior Actuarial Analyst.





## FSCO Introduces Pension Web Link

◆ August 18, 2003

Dear Pension Stakeholder:

**Re: FSCO Pension Web Link**

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In order to enhance access to information, FSCO is introducing the Pension Web Link. Effective September 2, 2003, pension stakeholders will be able to access contact information and other details related to most pension plans via FSCO's website, 24 hours a day, seven days a week. No confidential information about plan members or information that could allow for the identification of individual members will be available. The Pension Web Link has been developed in consultation with the pension industry, to provide immediate access to frequently requested information.

Information will only be available for Ontario registered pension plans that are active, in the process of being wound up, frozen (not open to new members or contributions) or are no longer active but represent prior benefits for a currently active pension plan. Information about pension plans with less than five members will not be made available due to privacy concerns.

Pension plan members and the general public will be able to access information on specific plans using the plan registration number, plan name or plan sponsor name. It will no longer be necessary to submit a Freedom of Information request to obtain this information. The available information will include:

- the plan registration number;
- the plan name;
- the corporate name and address of the plan sponsor, administrator and custodian;
- the effective date, fiscal year end, plan type, benefit type and total active membership in the plan;
- the FSCO staff member assigned to the plan; and,
- selected transactions, including plan amendments and filing-related information.

An option to download a file containing selected information on specific registered pension plans will also exist.

FSCO will continue to respond to inquiries and complaints from pension plan members. FSCO does not have data regarding individuals or their entitlements under a specific plan. Therefore, those inquiries will continue to be directed to the Plan Administrator.

On September 2, 2003, the Pension Web Link may be accessed through the Pension section of FSCO's website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca). If you have any questions, please e-mail FSCO at [pensions@fSCO.gov.on.ca](mailto:pensions@fSCO.gov.on.ca) or call us at (416) 250-7250 or toll free at 1-800-668-0128.

Sincerely,

K. David Gordon  
Deputy Superintendent, Pensions



## Contacts for Plan Specific Enquiries

Contact Name	Title	Phone Number	Allocation Alpha Range
Jaen Pringi	Sr. Pension Officer	(416) 226-7826	
Gulnar Chandani	Pension Officer	(416) 226-7770	#s-A
Penny McIlraith	Pension Officer	(416) 226-7822	B-Bulk
Rita Vassallo	Pension Officer	(416) 226-7994	Cen-Cz
Kathy Carmosino	Pension Officer	(416) 226-7823	I-King
Preethi Anthonypillai	Pension Officer	(416) 226-7812	Kinh-Mark
Robin Gray	Sr. Pension Officer	(416) 226-7855	
Calvin Andrews	Pension Officer	(416) 226-7768	Gko-H
Mark Lucyk	Pension Officer	(416) 226-7781	D-Em
John Graham	Pension Officer	(416) 226-7774	Marl-Nes
Julina Lam Lyn	Pension Officer	(416) 226-7815	Net-Pep
Anna Vani	Pension Officer	(416) 226-7833	Peq-Rob
Rosemin Jiwa Jutha	Sr. Pension Officer	(416) 226-7816	
Christa Matz	Pension Officer	(416) 226-7979	Bull-Cm
Pauline Stephens	Pension Officer	(416) 590-7587	En-Gkn
John Khing Shan	(Bilingual) Pension Officer	(416) 590-7237	Roc-Sons
Hae-Jin Kim	Pension Officer	(416) 226-7876	Sont-The Drop
David Allan	Pension Officer	(416) 226-7803	The Droq-Unicorp
Chantal Laurin	Pension Officer	(416) 226-7808	Unicorp-Z





## FSCO Pension Advisory Committees — Membership as at September 2003

### Accounting and Assurance Advisory Committee

Besler, Jason  
French, Mike  
Racanelli, Nick  
Wade, Jack

Eigl, Charlie (**Chair**)  
Preis, Katherine  
Turner, Eric  
Walker, Albert (**Vice-Chair**)

### Actuarial Advisory Committee

Benjamin, Gavin  
DiRisio, Wendy  
Hutchinson, Laurie  
Newman, Laura  
Pitcher, Clare

Cohen, Lorne (**Chair**)  
Hart, David  
Levy, Thomas  
Peng, Peter  
Robertson, Marcus

### Investment Advisory Committee

Andrews, Doug  
Grantier, Bruce (**Chair**)  
Mercier, Eileen  
Pennal, Peter  
Schaefer, Klaus

Franks, Jim  
Kyle, Claire  
Mills, Daniel  
Pond, Robin  
Wirth, Alf

### Legal Advisory Committee

Forgie, Jeremy  
Healy, Priscilla  
Nachshen, Gary (**Chair**)  
Rienzo, Doug  
Whiston, Bethune

Gold, Murray (**Vice-Chair**)  
Lokan, Andrew  
O'Reilly, Hugh  
Rowe, Kevin



## HEARINGS/COURT MATTERS

The information set out below is current to July 16, 2003.

### Enforcement Matters

#### I. Mimik Industries Inc.

Charges were laid against the employer and the President of the employer for failing to remit required contributions to the pension plan. A first appearance was on June 13, 2002. A judicial pre-trial scheduled for June 25, 2003 was adjourned to July 9, 2003. On July 9, 2003, a trial date was set for November 10, 2003.

#### II. Club 300 Bowl

Charges were laid against the corporation and its two directors for non-remittance of employer and employee contributions, failure to file Annual Information Returns and failure to file Financial Statements. The first appearance was on July 24, 2002. Judicial pre-trials scheduled for February 26, 2003 and April 29, 2003, were postponed. The next appearance is on July 30, 2003.

#### III. Microcolour

Charges were laid against the corporation and its director for non-remittance of employer contributions. The first appearance date was on September 30, 2002. A pre-trial conference was on January 13, 2003. Trial dates have been set for September 19 and 22, 2003.

#### IV. Oetiker Ltd.

Charges were laid for failing to file Financial Statements for 1998, 1999 and 2000, for failing to file Annual Information Returns for 1999, 2000 and 2001 and for failing to pay the Annual Information Return filing fees for 1999, 2000 and 2001. The first appearance was on March 18, 2003. The next appearance is on August 14, 2003.

#### V. Rosko Forestry Operations Ltd.

Charges were laid against the employer and a corporate officer of the employer for failing to remit employer and employee contributions and for breach of the deemed statutory trust covering employee contributions. The first appearance in respect of the breach of trust charges was on May 22, 2003 in Haileybury, Ontario. The first appearance for the non-remittance charges was on June 2, 2003 in London, Ontario, at which time the non-remittance charges were moved to Haileybury to be heard with the breach of trust charges. The next appearance on all charges is on September 18, 2003 in Haileybury.

#### VI. Christopher Bain

Mr. Bain was a director and officer of a company that failed to remit to the employee pension plan both employer and employee pension contributions. Bain was convicted in his personal capacity for permitting the company to contravene the PBA. He was placed on probation and required to make restitution to the plan. He failed to comply with the probation order and was charged with breach of probation. On May 8, 2003, he pled guilty to breach of probation and sentencing is scheduled to take place on October 31, 2003.

### Court Matters

#### I. Monsanto

On June 5, 2003, the Supreme Court of Canada granted leave to Monsanto Canada Inc. and the Association of Canadian Pension Management to appeal the Court of Appeal's decision. The Court of Appeal held that subsection 70(6) of the PBA requires a distribution of surplus assets on partial wind up. A tentative date for the hearing of the appeal has been set for February 16, 2004.



## II. Ontario Teachers' Pension Plan Board (Anne Stairs)

In a decision issued on June 18, 2002, the Divisional Court ordered the Superintendent to issue an order directing the Ontario Teachers' Pension Plan Board to pay Ms. Stairs a pre-retirement death benefit pursuant to a separation agreement, subject to section 51 of the PBA. On September 3, 2002, the Court heard a motion by the Board to vary the decision insofar as quantum is concerned. The Court's decision on the motion was released on December 5, 2002. The Court also determined that the valuation date for the purposes of the calculation of quantum was the date of the divorce. The Court held that Ms. Stairs was entitled to not more than 50% of the pre-1987 death benefit plus 50% of the post-1987 death benefits to the date of divorce. The Court issued a declaration in respect of the pre-1987 amounts and directed the Superintendent to issue an order in respect of the post-1987 amounts. Ms. Stairs was awarded \$40,000 plus disbursements in costs. The Board applied for and obtained leave from the Court of Appeal to appeal the decision on quantum. Ms. Stairs applied for and obtained leave from the Court of Appeal to cross appeal the decision on quantum. The appeals are scheduled to be heard in the Court of Appeal on November 10, 2003.

## III. National Steel Car Limited

The Superintendent consented to the transfer of assets from the Amended Pension Plan for Salaried Employees of National Steel Car Limited (the "Salaried Plan") to the Amended Pension Plan for Hourly Employees of National Steel Car Limited (the "Hourly Plan"). The Superintendent's consent was given after submissions opposing the transfer were made by some members of the Salaried Plan who were

unhappy with the fact that the Salaried Plan's surplus would be merged into the Hourly Plan's fund, which had a deficit. The letter giving the consent stated that anyone dissatisfied with the consent could request an FST hearing.

The hearing was held by the FST on January 15 to 17, 2002. On May 31, 2002, the FST released its decision. In response to a motion brought by National Steel Car at the hearing, a majority decision held that the FST has no jurisdiction to conduct a hearing where the Superintendent has consented to the transfer of assets, relying upon the express wording of subsection 89(4). One panel member dissented, finding that there was jurisdiction based on the HOOPP and other cases and on a purposive reading of the PBA. The panel unanimously found that if there was jurisdiction, the Superintendent's consent would have been upheld, as surplus was not an "other benefit" to be considered under subsection 81(5) of the PBA.

The Salaried Plan members have appealed this decision to the Divisional Court. No date has yet been set for the hearing of the appeal.

## IV. Marshall-Barwick Limited

The issue in this hearing is whether an NOP proposing to refuse to approve the partial wind up report (because a member allegedly terminated for cause was not included in the partial wind up group) should be upheld. The hearing was held September 9, 2002. The panel released its decision on November 29, 2002, upholding the Superintendent's NOP and directing the administrator to file a revised wind up report that includes, in the partial wind up group, the member terminated for cause.

The company has appealed this decision to the Divisional Court. No date has yet been set for the hearing of the appeal.





## LEGISLATIVE CHANGES/REGULATORY POLICIES

Financial Services Commission of Ontario

Commission des services financiers de l'Ontario

<b>SECTION:</b>	Deadlines
<b>INDEX NO.:</b>	D050-802
<b>TITLE:</b>	Deadline for Early Filing of Actuarial Funding Valuation Reports — Regulation 909 s. 14
<b>APPROVED BY:</b>	Superintendent of Financial Services
<b>PUBLISHED:</b>	FSCO website (July 2003)
<b>EFFECTIVE DATE:</b>	July 15, 2003

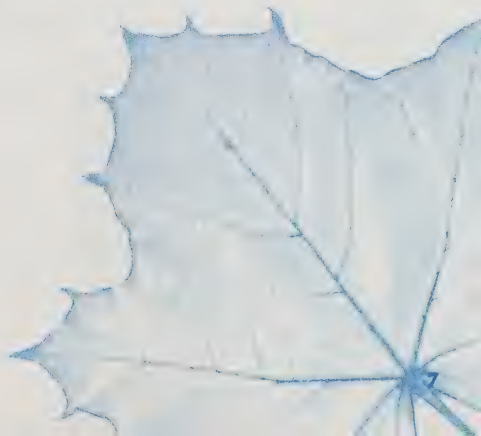
*Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909; R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.*

Section 14 of the Regulation gives the Plan Administrator the ability to choose the valuation date for a report filed under that section, provided the valuation date is no later than 3 years after the valuation date for the report last filed under that section. However, for any plan for which the report last filed indicated solvency concerns, a new report is required to be filed with a valuation date no later than 1 year from the valuation date of the report last filed.

If the Administrator chooses to file a new report with a valuation date that is prior to the 3rd anniversary or the 1st anniversary, as the case may be, of the effective date of the report last filed under section 14 (an "intra-valuation report"), the administrator must file the intra-valuation report within 9 months of the selected valuation date. Administrators should be aware that if the intra-valuation report is filed more

than 9 months after the selected valuation date, FSCO reserves the right to reject such a report.

Until an intra-valuation report is actually filed, the Administrator retains the option to choose a valuation date for the report that is no later than 3 years or 1 year, as the case may be, after the valuation date of the last filed section 14 valuation report. This is so whether or not the Administrator has indicated an intention to file the intra-valuation report. Therefore it is not necessary for Administrators to seek, nor does FSCO grant, extensions of time for filing intra-valuation reports.







## SUPERINTENDENT OF FINANCIAL SERVICES

### Administrator Appointments — Section 71 of the PBA

1. PricewaterhouseCoopers as the Administrator of the Cold Metal Products Limited Pension Plan for Hourly Employees (Registration No. 0975045), effective immediately.  
**DATED** at Toronto, Ontario, this 16th day of June, 2003.
2. Penad as the Administrator of the SMS Modern Cleaning Services Inc. Pension Plan for Salaried Employees (Registration No. 1057561), effective immediately.  
**DATED** at Toronto, Ontario, this 12th day of June, 2003.
3. Morneau Sobeco as the Administrator of the Canadian Tack and Nail Ltd. Pension Plan for Salaried Employees (Registration No. 0581306), effective immediately.  
**DATED** at Toronto, Ontario, this 9th day of June, 2003.
4. London Life as the Administrator of the Carnarvon Building Supplies Ltd. Employees Pension Plan (Registration No. 1040518), effective immediately.  
**DATED** at Toronto, Ontario, this 1st day of May, 2003.
5. Manufacturers Life as the Administrator of the Finlayson Enterprises Ltd. Salaried Employees Pension Plan (Registration No. 0247593), effective immediately.  
**DATED** at Toronto, Ontario, this 22nd day of April, 2003.
6. Standard Life as the Administrator of the RNG Group Inc. Employees Pension Plan (Registration No. 0491126), effective immediately.  
**DATED** at Toronto, Ontario, this 28th day of April, 2003.
7. Corporate Benefit Analysts, Inc. as the Administrator of the Procast Foundries Inc. Pension Plan for the Employees (Registration No. 0586073), effective immediately.  
**DATED** at Toronto, Ontario, this 24th day of March, 2003.
8. Standard Life as the Administrator of the Frost Fence Bargaining Unit Pension Plan (Registration No. 0697441), effective immediately.  
**DATED** at Toronto, Ontario, this 17th day of March, 2003.
9. Standard Life as the Administrator of the Frost Fence Salaried Employees Pension Plan (Registration No. 0697433), effective immediately.  
**DATED** at Toronto, Ontario, this 17th day of March, 2003.





## Notices of Proposal to Make an Order

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting the **Pension Plan for Employees Bridge Information Systems Canada, Inc., Registration Number 0368720 (the "Pension Plan")**;

**TO:** **The Standard Life Assurance Company**  
1245 Sherbrooke Street West  
Montreal PQ H3G 1G3

**Attention:** Dominic Muro,  
Compliance Support Specialist  
Group Savings and Retirement  
**Administrator of the Pension Plan for Employees of Bridge Information Systems Canada, Inc.**

**AND TO:** **Bridge Information Systems Canada, Inc.**  
145 King Street West  
Suite 900  
Toronto ON M5H 4C4

**Attention:** Nancy Fortner,  
Director, Human Resources  
**Employer**

**AND TO:** **PricewaterhouseCoopers Inc.**  
145 King Street West  
Toronto ON M5H 1V8

**Attention:** Ron Zimmerling

**Trustee in Bankruptcy for Bridge Information Systems Canada, Inc.**

### NOTICE OF PROPOSAL TO MAKE AN ORDER

**I PROPOSE TO MAKE AN ORDER** that the Pension Plan for Employees of Bridge Information Systems Canada Inc., Registration No. 0368720, be wound up in full effective November 13, 2001.

I propose to make this order pursuant to subsection 69(1) of the Act.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
3. A significant number of members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
4. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

<sup>1</sup>NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



**ANY NOTICE REQUIRING A HEARING**

shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**DATED** at Toronto, Ontario, this 24th day of March, 2003.

K. David Gordon,  
Deputy Superintendent, Pensions

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Rexnord Pension Plan for Employees of Nordberg Machinery Limited, Registration No. 950196;**

**TO:** **Rexnord Canada Limited**  
4701 West Greenfield Avenue  
Milwaukee WI 53201-2022

**Attention:** Ms. Christine Dlugi,  
Manager, Employee Benefits  
**Applicant and Employer**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the Act, consenting to the payment out of the Rexnord Pension Plan for Employees of Nordberg Machinery Limited, Registration No. 950196 (the "Plan"), to Rexnord Canada Limited in the amount of \$269,925 as at June 30, 2000, plus investment earnings and adjustments thereon to the date of payment.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that all the surplus entitlements of the members have been paid or otherwise provided for in accordance with the terms of the Surplus Sharing Agreement.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Rexnord Canada Limited is the company as defined in the Plan (the "Company").

2. The Plan was wound up, effective June 30, 2000.
3. As at June 30, 2000, the surplus in the Plan was estimated at \$899,750.
4. The Plan provides for payment of surplus to the Company on the wind up of the Plan.
5. The application discloses that by written agreement made by the Company and the members that 30% of the surplus will be paid to the Company and 70% of the surplus will be paid to the members as defined in the Surplus Distribution Agreement.
6. The Company has applied, pursuant to section 78 of the Act and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 30% of the surplus to the Company as of the effective date of the wind up.
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

### **YOUR WRITTEN NOTICE REQUIRING A HEARING** must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

**Attention:** The Registrar

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.





**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**DATED** at Toronto, Ontario, this 3rd day of April, 2003.

K. David Gordon,  
Deputy Superintendent, Pensions

Copy: Ari N. Kaplan, Koskie Minsky  
Christopher Newton, Hewitt Associates



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act consenting to a payment out of the **Pension Plan for Employees of Windsor/Essex Community Care Access Centre, Registration No. 1036599;**

**TO:** **Windsor/Essex Community Care Access Centre**  
5415 Tecumseh Road East  
2nd Floor  
Windsor ON N8T 1C5

**Attention:** Charles W. McLean

**Director of  
Finance/Administration**

### NOTICE OF PROPOSAL

**I PROPOSE TO MAKE AN ORDER** under s. 78(4) of the Act, consenting to the payment out of the Pension Plan for Employees of Windsor/Essex Community Care Access Centre, Registration No. 1036599 (the "Plan"), to Windsor/Essex Community Care Access Centre in the amount of \$69,347.37 as at December 6, 2002, plus interest, at the fund rate thereon, to the date of payment.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Windsor/Essex Community Care Access Centre is the employer as defined in the Plan (the "Employer").
2. As a result of Employer contributions being made into the pension fund of the wrong pension plan as a result of an administrative error.
3. Evidence of the overpayment to the fund for the months of January to November 2002 has been submitted to the Financial Services Commission of Ontario.
4. There were no member submissions made about the repayment.
5. The application appears to comply with section 78(4) of the Act.
6. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

### **YOUR WRITTEN NOTICE REQUIRING A HEARING** must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

**Attention:** The Registrar

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**DATED** at Toronto, Ontario, this 5th day of April, 2003.

K. David Gordon

Deputy Superintendent, Pensions





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Salaried Employees of The Seagram Museum, Registration No. 478131;**

**TO:**               **The Seagram Museum**  
1430 Peel Street  
Montreal, Quebec  
H3A 1S9

**Attention:** Mr. Michael Dell'Aniello,  
Director

**Applicant and Employer**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the Act, consenting to the payment out of the Pension Plan for Salaried Employees of The Seagram Museum, Registration No. 478131 (the "Plan"), to The Seagram Museum in the amount of \$158,100 as of July 1, 1997, subject to adjustment for investment earnings or losses and expenses, to the date of payment.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that all benefits and benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph 5 below) among members, former members and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. The Seagram Museum is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective July 1, 1997.
3. As at July 1, 1997, the surplus in the Plan was estimated at \$316,244.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 100% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
  - a) 50% to the Employer; and
  - b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan (after adding investment earnings and deducting expenses related to the wind up of the Plan.)
7. The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

**YOUR WRITTEN NOTICE REQUIRING A HEARING** must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**DATED** at Toronto, Ontario, this 8th day of April, 2003.

K. David Gordon,  
Deputy Superintendent, Pensions

cc: Ms. Hélène Beaulieu, Mercer Human  
Resource Consulting

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Employees of CYRO Canada Inc., Registration No. 402388;**

**TO:** **CYRO Canada Inc.**  
c/o CYRO Industries  
100 Enterprise Drive  
Seventh Floor  
P.O. Box 5055  
Rockaway, New Jersey 07866-5055  
U.S.A.

**Attention:** William Dorcas,  
Manager, Benefits  
Planning/Programs

**Applicant and Employer**

### NOTICE OF PROPOSAL

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the Act, consenting to the payment out of the Pension Plan for Employees of CYRO Canada Inc., Registration No. 402388 (the "Plan"), to CYRO Canada Inc. in the amount of \$678,472 as at April 21, 2001, adjusted for one-half of the appreciation/depreciation in the Plan's assets thereon to the date of payment.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Sharing Agreement defined in paragraph 5 below) and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. CYRO Canada Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was partially wound up, effective April 21, 2001.
3. As at April 21, 2001, the surplus in the wound up portion of the Plan was estimated at \$1,356,944.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 96.49% of the active members affected by the partial wind up (as defined in the application), the surplus in the Plan at the date of payment, after deduction of the partial wind up expenses is to be distributed:
  - a) 50% to the Employer; and
  - b) 50% to the beneficiaries of the wound up portion of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan (adjusted for 50% of the appreciation/depreciation to the date of payment of the plans's assets related to the wound up portion of the Plan).
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.





**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

**YOUR WRITTEN NOTICE REQUIRING A HEARING** must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

**Attn:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**DATED** at Toronto, Ontario, this 22nd day of April, 2003.

K. David Gordon,  
Deputy Superintendent, Pensions

cc: Frederick W. Carleton  
Margarethe Davies

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of  
the Superintendent of Financial Services to  
Make an Order under section 69 of the Act  
respecting the **Pension Plan for All  
Salaried and Non-Union Employees of  
Participating Affiliates of Bracknell  
Corporation, Registration Number  
0956798 (the "Pension Plan")**;

**TO:** **Manufacturers Life Insurance  
Company**  
500 King North  
P.O. Box 1602  
Waterloo ON N2J 4C6

**Attention:** Yolanda Pingos  
**Administrator of  
The Pension Plan for  
All Salaried and Non-Union  
Hourly Employees of  
Participating Affiliates of  
Bracknell Corporation**

**AND TO:** **Bracknell Corporation**  
400 Weston Road  
Toronto ON M9L 3A2

**Attention:** Kae Baiocco,  
Benefits Administrator  
**Employer**

**AND TO:** **PricewaterhouseCoopers Inc.**  
145 King Street West  
Toronto ON M5H 1V8

**Attention:** Roger Deck

**Interim Receiver for  
The State Group Limited,  
a Participating Affiliate of  
Bracknell Corporation**

**NOTICE OF PROPOSAL TO MAKE  
AN ORDER**

**I PROPOSE TO MAKE AN ORDER** that  
the Pension Plan for All Salaried and Non-  
Union Hourly Employees of Participating  
Affiliates of Bracknell Corporation, Registration  
No. 0956789, be wound up in full effective  
November 1, 2001.

I propose to make this order pursuant to subsec-  
tion 69(1) of the Act.

**I PROPOSE TO MAKE THIS ORDER FOR  
THE FOLLOWING REASONS:**

1. There was a cessation or suspension of  
employer contributions to the pension fund.
2. A significant number of members of the  
Pension Plan ceased to be employed by  
the employer as a result of the discontinu-  
ance of all or part of the business of the  
employer or as a result of the reorganization  
of the business of the employer.
3. All or a significant portion of the employer's  
business carried on by the employer at a  
specific location is discontinued.
4. Such further reasons as may come to my  
attention.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

**ANY NOTICE REQUIRING A HEARING** shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**DATED** at Toronto, Ontario, this 6th day of May, 2003.

K. David Gordon,  
Deputy Superintendent, Pensions

<sup>1</sup>NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Retirement Plan for Significant Shareholder Employees of John C. Bourinot Sales Limited, Registration No. 411959;**

**TO:** **John C. Bourinot**  
John C. Bourinot Sales Limited  
c/o Stephen O'Neill,  
CFP, CLU, CH.F.C.  
Sun Life of Canada  
245 Fairview Mall Drive  
Willowdale ON M2J 4T1  
**Applicant and Employer**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the Act, consenting to the payment out of the Retirement Plan for Significant Shareholder Employees of John C. Bourinot Sales Limited, Registration No. 411959 (the "Plan"), to John C. Bourinot Sales Limited in the amount of \$384,900 as of August 1, 2000, subject to adjustments for investment earnings or losses and expenses, to the date of payment.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. John C. Bourinot Sales Limited is the employer as defined in the Plan (the "Employer").

2. The Plan was wound up, effective August 1, 2000.
3. As at August 1, 2000, the surplus in the Plan was estimated at \$384,900.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and 100% of the active members entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses, is to be distributed 100% to the Employer.
6. The Employer has applied, pursuant to section 78 of the Act and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 100% of the surplus in the Plan (after adding investment earnings and deducting expenses related to the wind up of the Plan.)
7. The application appears to comply with section 78 and subsection 79(3) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**YOUR WRITTEN NOTICE REQUIRING A HEARING** must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**DATED** at Toronto, Ontario, this 9th day of May, 2003.

K. David Gordon,  
Deputy Superintendent, Pensions

cc: Timothy B. Lawrence, F.S.A., F.C.I.A.,  
Cowan Wright Limited



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Retirement Plan for the Employees of W&S Services Limited, Registration No. 0397554**;

**TO:** **Sutherland-Schultz Inc.**  
P.O. Box 5006  
401 Fountain Street North  
Cambridge ON N3H 5P3

**Attention:** Wayne Brohman  
Manager, Financial Services  
**Applicant and Employer**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the Act, consenting to the payment out of the Retirement Plan for the Employees of W&S Services Limited, Registration No. 0397554 (the Plan), to Sutherland-Schultz Inc. in the amount of \$148,170 as at April 30, 2002, plus investment earnings minus expenses incurred thereon to the date of payment.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that all benefits and other payments, including any enhancements arising from the Surplus Sharing Agreement, to which members, former members, and any other persons entitled on the wind up of the plan, have been settled.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. W&S Services Limited (a wholly owned subsidiary of Sutherland-Schultz Inc.) was the employer as defined in the Plan. W&S

Services Limited was dissolved pursuant to a special resolution of all the shareholders on December 16, 1996. To bring the dissolution into effect, Articles of Dissolution of W&S Services Limited were registered effective January 1, 1997, and all of the assets of W&S Services Limited were wound up into Sutherland-Schultz Inc. (the "Employer").

2. The Plan was wound up, effective January 1, 1997.
3. As at January 1, 1997, the surplus in the Plan was estimated at \$187,065.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and 100% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
  - a) 70% to the Employer; and
  - b) 30% to the beneficiaries of the Plan as defined in the Surplus Sharing Agreement.
6. The Employer has applied, pursuant to section 78 of the Act and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 70% of the surplus in the Plan (after adding 70% of investment earnings and deducting 70% of the expenses related to the wind up of the Plan.)
7. The application appears to comply with section 78 and subsections 79(3)(a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.





8. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

**YOUR WRITTEN NOTICE REQUIRING A HEARING** must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**DATED** at Toronto, Ontario, this 30th day of May, 2003.

K. David Gordon,  
Deputy Superintendent, Pensions

Copy: Claude N. Marchessault,  
Barrister & Solicitor  
Rick Jeffery

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting the **Registered Pension Plan for Employees of SuperPac Acquisitions Inc., Registration Number 1054071 (the "Plan")**;

**TO:** **Sun Life Financial and Clarica**  
Group Savings Legislation  
and Documentation  
227 King Street South  
Waterloo ON N2J 4C6

**Attention:** Ms. Audrey Humphrey  
**Appointed Administrator of the Plan**

**AND TO:** **SuperPac Acquisitions Inc.**  
777 Laurel Street  
Cambridge ON N3H 3Z1

**Attention:** Ms. Pearl Evans  
**Employer**

**AND TO:** **Spergel & Associates Inc.**  
505 Consumers Road  
Suite 200  
North York ON M2J 4V8  
**Receiver for SuperPac Acquisitions Inc.**

## **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** in respect of the Plan under section 69(1) of the Act.

### **PROPOSED ORDER:**

That the Plan be wound up in whole effective January 23, 2002.

## **REASONS:**

1. Failure of the employer to make contributions to the pension fund of the Plan as required by the Act or the regulations pursuant to clause 69(1)(b) of the Act.
2. The employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
3. All or a significant portion of the business carried on by the employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.
4. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>

**YOUR WRITTEN NOTICE** must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

<sup>1</sup>NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



**IF YOU FAIL TO REQUEST A HEARING  
WITHIN THIRTY (30) DAYS, I MAY MAKE  
THE ORDER PROPOSED IN THIS NOTICE.**

**DATED** at North York, Ontario, this 13th day  
of June, 2003.

K. David Gordon,  
Deputy Superintendent, Pensions





## Notices of Approval to Refuse to Consent to an Application

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** an Application under section 78(4) of the Act submitted by The Great Atlantic & Pacific Company of Canada, Limited, in respect of the **Jane Parker Bakery Limited Retirement Plan for Full-time Bargaining Employees, Registration Number 0400325;**

**TO:** **The Great Atlantic & Pacific Company of Canada, Limited**  
P.O. Box 68 Station 'A'  
Toronto, Ontario  
M5W 1A6

**Attention:** Terry Howard,  
Vice President,  
Tax and Treasury Services

**Applicant, Employer and  
Administrator of the Plan**

### NOTICE OF PROPOSAL

**I PROPOSE TO REFUSE TO CONSENT** to the application dated October 2, 2001, made by The Great Atlantic & Pacific Company of Canada, Limited (the "Applicant") for payment to the Applicant out of the pension fund for the Jane Parker Bakery Limited Retirement Plan for Full-time Bargaining Employees, Registration Number 0400325 (the "Plan"), of an overpayment by the Applicant to the pension fund for the Plan.

### REASONS FOR THE REFUSAL:

1. The Applicant applied on or about October 2, 2001 (the "Application"), pursuant to section 78(4) of the Act, for the Superintendent's consent to a payment of \$145,361 as of July 31, 2001, plus investment earnings thereon to the date of payment, out of the fund for the Plan. The Applicant claims this is the amount of an overpayment by

the employer into the pension fund for the Plan made on November 30, 2000. The Superintendent's position is that these funds constitute surplus assets rather than an overpayment.

2. The Plan is a defined benefit pension plan. The Plan is to be fully wound up with an effective wind up date of March 4, 2000. In the wind up report dated June 2000, a deficit of \$997,673 on a wind up basis was identified.
3. The wind up report was approved by the Superintendent of Financial Services (the "Superintendent") on or about September 29, 2000. In the letter approving the wind up report, the Superintendent stated that the employer could proceed with the distribution of the assets of the Pension Plan in accordance with the wind up report subject, *inter alia*, to the limitation that since the employer intended to fund the deficit in accordance with section 75 of the Act, the employer was required to comply with section 32 of Regulation 909, R.R.O. 1990 (the "Regulation").
4. The Application states that an updated estimate as at September 30, 2000, indicated that the deficit was no greater than \$500,000. The Application states that the Applicant made a lump sum payment of \$500,000 to the pension fund of the Plan on November 30, 2000. The Applicant claims that this amount was a payment made pursuant to the wind up report and was not made pursuant to a report filed under section 32 of the Regulation. The Application also states that all members' benefits were subsequently "fully settled" and that owing to increases in annuity purchase rates between March 4, 2000 and the date of the annuity purchases, there was a financial gain to the Plan resulting in excess assets in



the Plan of \$145,361 as at July 31, 2001 (the "excess assets").

5. Section 1 of the Act defines surplus as the "excess of the value of the assets of a pension fund related to a pension plan over the value of the liabilities under the pension plan, both calculated in the prescribed manner." The excess assets are assets of the pension fund for the Plan left over after all the liabilities under the Plan have been satisfied and, therefore, the excess assets are surplus within the meaning of section 1 of the Act and, as such, the Superintendent can only consent to the payment of money that is surplus to the employer if the requirements of section 79 of the Act have been met. The Applicant has not provided any evidence that the requirements of section 79 have been met.
6. The excess assets do not result from any of the circumstances listed in the Financial Services Commission of Ontario's (FSCO), policy entitled "Application for Refund of Employer Overpayment" (Index No. R350-102), in which an employer may be considered to have over-contributed to a pension fund for the purposes of section 78(4) of the Act. Specifically, the excess assets do not result from contributions made on the basis of an actuarial report for which the effective date has passed, but when the new report was filed, such contributions exceeded those required by the new report. Nor do the excess assets result from payments made directly by the employer when those payments should have been made from the pension fund. Lastly, the excess assets do not result from contributions paid into the pension fund of the wrong pension plan as a result of an administrative error.
7. Section 75(1)(b)(ii) of the Act requires that where a pension plan is wound up, the employer pay into the pension fund an amount equal to the amount by which, the value of the pension benefits accrued with respect to employment in Ontario exceed the value of the assets of the pension fund allocated as prescribed for payment of pension benefits accrued with respect to employment in Ontario. Section 32(1) of the Regulation states that "[u]ntil the employer's liability under section 75 of the Act is funded, the administrator of the plan shall annually cause the plan to be reviewed and a report to be prepared by a[n] actuary and shall file the report within six months after the valuation date of the report." Section 32(4) of the Regulation states: Where a report made under this section shows that there is no further amount to be funded, any surplus may revert to the employer, subject to the requirements of section 79 of the Act.
8. Although no report was filed by the Applicant under section 32 of the Regulation, the actuary for the Plan, in a letter dated December 27, 2001, certified that there was no further amount to be funded. Thus under section 32(4) of the Regulation, assets of the pension fund of the Plan left over after the payment of all benefit entitlements may only revert to the employer if the requirements of section 79 have been met. The requirement set out in section 32(4) of the Regulation applies whether the surplus remaining is attributable to amounts paid into the Plan pursuant to a wind up report or pursuant to a report filed under section 32. As noted above, the Applicant has not provided any evidence that the requirements of section 79 have been met. Therefore, the Superintendent



cannot consent to the withdrawal of any surplus funds by the Applicant.

9. In the alternative, if the excess assets are an overpayment, section 78(4) states that the Superintendent shall not consent to payment out of a pension fund to an employer of an amount not in excess of the amount of an overpayment by the employer into the pension fund "unless the application is made in the same fiscal year of the pension fund as the fiscal year in which the overpayment" occurred. The payment that the Applicant alleges was an overpayment was made on November 30, 2000, but the Application was not made until October 2, 2001. The fiscal year end for the Plan is December 31. The reasons offered by the Applicant are not sufficient to warrant an extension of the time limit in section 78(4) of the Act pursuant to section 105 of the Act.
10. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>

**YOUR WRITTEN NOTICE** must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

For further information, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.**

**DATED** at North York, Ontario, this 24th day of March, 2003.

K. David Gordon,  
Deputy Superintendent, Pensions

<sup>1</sup>NOTE — PURSUANT to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.





## Orders that Pension Plans be Wound Up

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting the **Pension Plan for Wylie Press, a Division of the Johnstone Group Inc., Registration Number 0324335 (the "Pension Plan")**;

**TO: The Manufacturers Life Insurance Company**

500 King North  
P.O. Box 1602  
Waterloo ON N2J 3K6

**Attention:** Karen Osborne,  
Plan Design Specialist  
**Administrator of the Pension Plan for Wylie Press, a Division of The Johnstone Group Inc.**

**AND TO: Wylie Press, a Division of The Johnstone Group Inc.**

111 Ferrier Street  
Markham ON L3R 3K6

**Attention:** Dianna Cooke,  
Comptroller  
**Employer**

### ORDER

**ON** the 2nd day of December, 2002, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order dated the 2nd day of December, 2002, pursuant to subsection 69(1) of Act, to the Administrator and to the Employer to wind up in whole the Pension Plan for Wylie Press, a Division of The Johnstone Group Inc., Registration No. 0324335.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal"),

within the time prescribed by subsection 89(6) of the Act.

**IT IS THEREFORE ORDERED** that the Pension Plan for Wylie Press, a Division of The Johnstone Group Inc., Registration No. 0324335, be wound up in whole effective January 31, 2000, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer failed to make contributions to the pension fund as required by the Act and regulations.
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
4. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.

**PURSUANT TO** subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

**Shiner Kideckel Zweig Inc.**

10 West Pearce Street  
Suite 4  
Richmond Hill ON L4B 1B6

**Attention:** Joel Kideckel

**Trustee in Bankruptcy for Wylie Press, a Division of The Johnstone Group Inc.**

**DATED** at Toronto, Ontario, this 24th day of March, 2003.

Tom Golfetto,  
Director, Pension Plans Branch  
by Delegated Authority from the  
Superintendent of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** an application  
under ss. 78(1) of the Act submitted by  
Samsonite Canada Inc. in respect of the  
**Samsonite Canadian Retirement Income  
Plan, Registration Number 373225;**

**TO:** **Samsonite Canada Inc.**  
753 Ontario St.,  
Stratford, Ontario  
N5A 6B1

**Attention:** Mr. Fred Judge

### **ORDER**

**ON** or about October 11, 2001, the Superintendent of Financial Services issued a Notice of Proposal to Refuse to Consent to Application (the "NOP") to Samsonite Canada Inc. (the "Employer"), in respect of the Employer's application dated March 20, 2001, for the payment of surplus to the Employer on the wind up of the Samsonite Canadian Retirement Income Plan, Registration Number 373225 (the "Plan"), under subsection 78(1) of the Act (the "Application").

**A REQUEST** for Hearing dated November 2, 2001, was received by the Financial Services Tribunal (the "Tribunal") in connection with this matter and a hearing was held on June 3, 2002.

**THE TRIBUNAL** in its Reasons dated October 21, 2002, affirmed the NOP and directed the Superintendent to dismiss the Application.

**NO APPEAL** has been taken from the decision of the Tribunal by the Employer and, therefore, the decision of the Tribunal is final.

**I THEREFORE REFUSE** to consent to the Application of Samsonite Canada Inc. dated March 20, 2001, for the payment of surplus in the Plan to the Employer under subsection 78(1) of the Act.

**DATED** at Toronto, Ontario, this 3rd day of April, 2003.

K. David Gordon,  
Deputy Superintendent, Pensions



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** an application  
under ss. 78(1) of the Act submitted by Samsonite  
Canada Inc. in respect of the **Samsonite  
Canadian Service Related Pension Plan,**  
**Registration Number 398578;**

**TO:** **Samsonite Canada Inc.**  
753 Ontario St.,  
Stratford, Ontario  
NSA 6B1

**Attention:** Mr. Fred Judge

**Employer and Administrator  
of the Plan**

#### **ORDER**

**ON** or about June 1, 2001, the Superintendent  
of Financial Services issued a Notice of Proposal  
to Refuse to Consent to Application (the "NOP")  
to Samsonite Canada Inc. (the "Employer")  
in respect of the Employer's application dated  
November 13, 2000, for the payment of surplus  
to the Employer on wind up of the Samsonite  
Canadian Service Related Pension Plan,  
Registration Number 398578 (the "Plan"), under  
subsection 78(1) of the Act (the "Application").

**A REQUEST** for Hearing dated July 3, 2001,  
was received by the Financial Services Tribunal  
(the "Tribunal") in connection with this matter  
and a hearing was held on June 3, 2002.

**THE TRIBUNAL** in its Reasons dated October  
21, 2002, affirmed the NOP and directed the  
Superintendent to dismiss the Application.

**NO APPEAL** has been taken from the decision  
of the Tribunal by the Employer and, therefore,  
the decision of the Tribunal is final.

**I THEREFORE REFUSE** to consent to the  
Application of Samsonite Canada Inc. dated  
November 13, 2000, for the payment of surplus  
to the Employer under subsection 78(1) of  
the Act.

**DATED** at Toronto, Ontario, this 3rd day of  
April, 2003.

K. David Gordon,  
Deputy Superintendent, Pensions





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act in respect of the **Employee Retirement Plan for the Employees of Rosko Forestry Operations Ltd., Registration No. 1022409;**

**TO:** **Rosko Forestry Operations Ltd.**  
P.O. Box 753  
953 Government Road West  
Kirkland Lake, Ontario  
P2N 3K1

**Attention:** John Joseph Rosko,  
President  
**Employer and Administrator**

**DATED** at Toronto, Ontario, this 23rd day of April, 2003.

Tom Golfetto,  
Director, Pension Plans Branch  
by Delegated Authority from the  
Superintendent of Financial Services

## **ORDER**

**ON** or about February 14, 2003, the Superintendent of Financial Services caused to be served on Rosko Forestry Operations Ltd., pursuant to subsection 69(1) of the Act, a Notice of Proposal, dated February 13, 2003, to Make an Order that the Employee Retirement Plan for Employees of Rosko Forestry Operations Ltd. be wound up in whole effective the date of the order proposed therein.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Employer and Administrator or by any other party within the time prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE ORDERS** that the Employee Retirement Plan for Employees of Rosko Forestry Operations Ltd., Registration No. 1022409, be wound up in whole effective the date of this Order.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting the **Everest & Jennings Canadian Limited Employees Pension Plan, Registration Number 0527671 (the "Pension Plan")**;

**TO:** **London Life Insurance Company**  
Suite 320  
33 Yonge Street  
Toronto ON M5E 4C6

**Attention:** Lynn Barron,  
Customer Service Specialist  
**Administrator of the  
Everest & Jennings Canadian  
Limited Employees  
Pension Plan**

**AND TO:** **Everest & Jennings  
Canadian Limited**  
111 Snidercroft Road  
Concord ON L4K 2J8

**Attention:** William N. James,  
Vice-President Finance  
**Employer**

### **ORDER**

**ON** the 14th day of February, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order, dated the 13th day of February, 2003, pursuant to subsection 69(1) of Act, to the Administrator and to the Employer to wind up in whole the Everest & Jennings Canadian Limited Employees Pension Plan, Registration No. 0527671.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal"), within the time prescribed by subsection 89(6) of the Act.

**IT IS THEREFORE ORDERED** that the Everest & Jennings Canadian Limited Employees Pension Plan, Registration No. 0527671, be wound up in whole effective December 19, 2001, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
3. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.

**PURSUANT TO** subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

**Deloitte & Touche Inc.**  
181 Bay Street  
Suite 1400  
Toronto ON M5J 2V1

**Attention:** Robert Paul  
Partner

**Trustee in Bankruptcy for  
Everest & Jennings**

**DATED** at Toronto, Ontario, this 29th day of April, 2003.

Tom Golfetto,  
Director, Pension Plans Branch  
by Delegated Authority from the  
Superintendent of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Group Pension Plan for the Employees of Mount Forest Ambulance Service Ltd., Registration Number 983510 (the "Plan")**;

**TO:** **Equitable Life Insurance Company**

One Westmount Road North  
P.O. Box 1603  
Waterloo ON N2J 4C7

**Attention:** Ms. Lerma Aguto

**Appointed Administrator of the Plan**

**AND TO:** **Mount Forest Ambulance Service Ltd.**

P.O. Box 4011  
Mount Forest ON N0G 2L0

**Attention:** Mr. James A. Borrett,  
President

**Employer**

**AND TO:** **Ontario Public Service Employees' Union**

100 Lesmill Road  
Toronto ON M3B 3P8

**Attention:** Ms. Shirley McVittie,  
Senior Benefits Counsellor

**Union representative of the members of the Plan, OPSEU Local 226.**

## ORDER

**ON** or about the 10th day of February, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order pursuant to subsection 69(1) of the Act, that the Plan be wound up in whole effective January 31, 2001.

**NO** request for a hearing has been received by the Financial Services Tribunal in connection with this matter.

**IT IS THEREFORE ORDERED** that the Plan be wound up in whole effective January 31, 2001.

## **REASONS:**

1. There was a cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. A significant number of members of the Plan ceased to be employed by the employer as a result of the discontinuance of the business of the employer, pursuant to clause 69(1)(d) of the Act.

**DATED** at North York, Ontario, this 29th day of April, 2003.

Tom Golfetto,  
Director, Pension Plans Branch  
by Delegated Authority from the  
Superintendent of Financial Services





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order Requiring the Wind Up of the **Pension Plan for the Employees of Dyment Limited, Registration Number 0242735;**

**AND IN THE MATTER OF** the Actuarial Report on the Partial Wind Up submitted by Dyment Limited to the Superintendent of Financial Services respecting the **Pension Plan for the Employees of Dyment Limited, Registration Number 0242735;**

**TO: Dyment Limited**  
1235 Bay Street, Suite 400  
Toronto, Ontario  
M5R 3K4

**Attention:** Elmer A. Campbell,  
Controller

**Employer and Administrator  
of the Pension Plan for the  
Employees of Dyment Limited**

### **ORDER**

**ON** March 22, 2001, the Superintendent of Financial Services issued a Notice of Proposal to Make an Order, dated March 19, 2001, to the Employer and to the Administrator of the Pension Plan for the Employees of Dyment Limited, Registration Number 0242735 (the "Plan"), pursuant to subsection 69(1) of the PBA, that proposed to fully wind up the Plan effective August 23, 1996. The same Notice of Proposal was also issued pursuant to subsection 70(5) of the PBA and proposed to refuse to approve the actuarial report prepared in April 1997 in relation to the partial wind up of the Plan as at August 23, 1996.

**ON** April 18, 2001, Dyment Limited requested a hearing by the Financial Services Tribunal, which assigned Number P0157-2001 to the proceeding.

**ON** July 13, 2001, a pre-hearing conference was convened before the Chair of the Financial Services Tribunal, and Mobeen Khaja was granted full party status.

**ON** March 19, 2003, the parties agreed to settle the issues in accordance with a Memorandum of Settlement which has been signed and filed with the Financial Services Tribunal.

**ON** April 29, 2003, Dyment Limited withdrew its request for a hearing by the Financial Services Tribunal.

### **I THEREFORE ORDER THAT:**

#### **A.) Partial Wind Up:**

1. Dyment Limited ("Dyment") is to file an addendum to the partial wind up report with respect to the partial wind up effective August 23, 1996. The addendum shall provide for the distribution of surplus assets in proportion to the liabilities of members related to the partial wind up group as identified in the April 1997 partial wind up report.
2. The amount of surplus to be distributed in accordance with the addendum to the partial wind up report shall be based on the assets and liabilities set out in the April 1997 partial wind up report, with interest applied based on the Plan fund's net rate of return between the partial wind up date and the date of distribution, or such other rate as may be agreed to by the parties.
3. Dyment shall file the addendum to the partial wind up report within 90 days from the date of this Order.



4. Dyment Limited shall, if it determines that surplus belongs to the employer, file a surplus withdrawal application relating to the partial wind up of the Plan within 90 days of the date on which payment of the affected members' basic benefits, as set out in the report, has been approved by the Superintendent of Financial Services.

#### **B.) Full Wind Up:**

5. Dyment shall file a full wind up report for the Plan as at December 31, 2002. The full wind up report shall provide for the distribution of any surplus assets as at the full wind up date as required by the PBA.
6. Dyment shall file the full wind up report within 90 days from the date of this Order.
7. Dyment shall, if it determines that surplus belongs to the employer, file a surplus withdrawal application relating to the full wind up of the Plan within 90 days of the date on which payment of the affected members' basic benefits, as set out in the report, has been approved by the Superintendent of Financial Services.

#### **REASONS:**

- A. Dyment is the employer and administrator of the Plan.
- B. On April 9, 1996, Dyment sold its "Display Division" to Chesapeake Display and Packaging (Canada) Limited ("Chesapeake"). As a result of this sale, 76 active members of the Plan became employees of Chesapeake, and their membership in the Plan was terminated.
- C. These employees became members of Chesapeake's pension plan, and Chesapeake assumed responsibility for their pension benefits. The portion of the assets in the Plan's fund that was attributable to the 76

active members was transferred to Chesapeake and this transfer was approved by the Superintendent.

- D. Dyment sold its remaining operations to DDS Dyment Distribution Services Ltd. ("DDS") effective August 23, 1996. All 56 of the remaining active Plan members became employees of DDS. Since DDS had no pension plan, Dyment proposed to partially wind up the Plan in respect of the members transferred to DDS.
- E. As at August 23, 1996, there were no remaining active members in the Plan and Dyment was no longer required to make contributions to the Plan's fund.
- F. Pursuant to clause 69(1)(a) of the PBA, the Superintendent of Financial Services may by order require the wind up of a pension plan if there is a cessation or suspension of employer contributions to the pension plan fund.
- G. In April 1997, Dyment filed a report for the partial wind up of the Plan as at August 23, 1996, which showed that the Plan had surplus assets estimated at \$2,236,222.00.
- H. The partial wind up report does not provide for the distribution of surplus assets as required by the PBA.
- I. The parties to Financial Services Tribunal proceeding Number P0157-2001 have agreed to settle the issues in that proceeding on the terms set out in paragraphs 1 through 7 of this Order.
- J. Such further and other reasons as may come to my attention.

**THE ADMINISTRATOR IS REQUIRED**, pursuant to subsection 89(5) of the PBA, to give notice of this Order to all the members and former members of the Plan.



**DATED** at North York, Ontario, June 10, 2003.

K. David Gordon,  
Deputy Superintendent, Pensions  
by Delegated Authority from the  
Superintendent of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting the **Pension Plan for Employees of Bridge Information Systems Canada, Inc., Registration Number 0368720 (the "Pension Plan")**;

**TO:** **The Standard Life Assurance Company**  
1245 Sherbrooke Street West  
Montreal PQ H3G 1G3

**Attention:** Dominic Muro,  
Compliance Support Specialist  
Group Savings and Retirement  
**Administrator of the Pension Plan**

**AND TO:** **Bridge Information System Canada, Inc.**  
145 King Street West  
Suite 900  
Toronto ON M5H 4C4

**Attention:** Nancy Fortner,  
Director, Human Resources  
**Employer**

### **ORDER**

ON the 25th day of March, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order, dated the 24th day of March, 2003, pursuant to subsection 69(1) of Act, to the Administrator and to the Employer to wind up in whole the Pension Plan for Employees of Bridge Information Systems Canada, Inc., Registration No. 0368720.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal"), within the time prescribed by subsection 89(6) of the Act.

**IT IS THEREFORE ORDERED** that the Pension Plan for Employees of Bridge Information Systems Canada, Inc., Registration No. 0368720, be wound up in whole effective November 13, 2001, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
3. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.

**PURSUANT TO** subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

**PricewaterhouseCoopers Inc.**  
145 King Street West  
Suite 900  
Toronto ON M5H 1V8

**Attention:** Ron Zimmerling,  
Partner

**Trustee in Bankruptcy for Bridge Information Systems Canada, Inc.**

**DATED** at Toronto, Ontario, this 12th day of June, 2003.

Tom Golfetto,  
Director, Pension Plans Branch  
by Delegated Authority from the  
Superintendent of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting the **Pension Plan for the Employees of C & C International Yachts Limited, Registration Number 0687632 (the "Pension Plan")**;

**TO:** **The Manufacturers Life Insurance Company**  
500 King North  
P.O. Box 1602  
Waterloo ON N2J 3K6

**Attention:** Yolanda Pingos,  
Plan Design Associate  
**Administrator of the Pension Plan**

**AND TO:** **Bridge Information System Canada, Inc.**  
145 King Street West  
Suite 900  
Toronto ON M5H 4C4

**Attention:** Nancy Fortner,  
Director, Human Resources  
**Employer**

### **ORDER**

**ON** the 25th day of March, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order, dated the 24th day of March, 2003, pursuant to subsection 69(1) of Act, to the Administrator and to the Employer to wind up in whole the Pension Plan for Employees of Bridge Information Systems Canada, Inc., Registration No. 0368720.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal (the "Tribunal"), within the time prescribed by subsection 89(6) of the Act.

**IT IS THEREFORE ORDERED** that the Pension Plan for Employees of Bridge Information Systems Canada, Inc., Registration No. 0368720, be wound up in whole effective November 13, 2001, for the following reasons:

1. There was a cessation or suspension of Employer contributions to the pension fund.
2. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
3. A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.

**PURSUANT TO** subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

**PricewaterhouseCoopers Inc.**  
145 King Street West  
Suite 900  
Toronto ON M5H 1V8

**Attention:** Ron Zimmerling  
Partner

**Trustee in Bankruptcy for Bridge Information Systems Canada, Inc.**

**DATED** at Toronto, Ontario, this 24th day of June, 2003.

Tom Golfetto,  
Director, Pension Plans Branch  
by Delegated Authority from the  
Superintendent of Financial Services



## Consents to Payments of Surplus out of Wound Up Pension Plans

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act consenting to a payment out of the **Pension Plan for Employees of Windsor/Essex Community Care Access Centre, Registration No. 1036599**;

**TO:** **Windsor/Essex Community Care Access Centre**  
5415 Tecumseh Road East  
2nd Floor  
Windsor ON N8T 1C5

**Attention:** Charles W. McLean

**Director of  
Finance/Administration**

### **THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS**

to the payment out of of the Pension Plan for Employees of Windsor/Essex Community Care Access Centre, Registration No. 1036599, of \$69,347.37 as at December 6, 2002, plus interest at the fund rate of return thereon to the date of payment, to Windsor/Essex Community Care Access Centre.

**DATED** at Toronto, Ontario, this 22nd day of April, 2003.

Tom Golfetto,  
Director, Pension Plans Branch  
by Delegated Authority from the  
Superintendent of Financial Services

### **CONSENT**

**ON** or about April 7, 2003, the Superintendent of Financial Services caused to be served on the Windsor/Essex Community Care Access Centre a Notice of Proposal, dated April 1, 2003, to consent, pursuant to subsection 78(4) of the Act, to payment out of the Pension Plan for Employees of Windsor/Essex Community Care Access Centre, Registration No. 1036599, to Windsor/Essex Community Care Access Centre in the amount of \$69,347.37 as at December 6, 2002, plus interest, at the fund rate thereon, to the date of payment.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to payment out of the **Rexnord Pension Plan for Employees of Nordberg Machinery Limited, Registration No. 950196;**

**TO:** **Rexnord Canada Limited**  
4701 West Greenfield Avenue  
Milwaukee WI 53201-2022

**Attention:** Ms. Christine Dlugi,  
Manager, Employee Benefits  
**Applicant and Employer**

### CONSENT

**ON** April 7, 2003, the Superintendent of Financial Services caused to be served on Rexnord Canada Limited a Notice of Proposal, dated April 3, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Rexnord Pension Plan for Employees of Nordberg Machinery Limited, Registration No. 950196 (the "Plan"), to Rexnord Canada Limited in the amount of \$269,925 as at June 30, 2000, plus investment earnings and adjustments thereon to the date of payment.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Rexnord Pension Plan for Employees of Nordberg Machinery Limited, Registration No. 950196, of \$269,925 as at June 30, 2000, plus investment earnings and adjustments thereon to the date of payment, to Rexnord Canada Limited.

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Applicant satisfies me that all the surplus entitlements of the members have been paid or otherwise provided for in accordance with the terms of the Surplus Sharing Agreement.

**DATED** at Toronto, Ontario, this 27th day of May, 2003.

Tom Golfetto,  
Director, Pension Plans Branch  
by Delegated Authority from the  
Superintendent of Financial Services

Copy: Ari N. Kaplan, Koskie Minsky  
Christopher Newton, Hewitt Associates



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to payment out of the **Pension Plan for Salaried Employees of The Seagram Museum, Registration No. 478131;**

**TO:** **The Seagram Museum**  
4160 Sherbrooke St. West  
Suite 102 Westmount  
Montreal, Quebec  
H3Z 1C2

**Attention:** Mr. Gabor Jellinek,  
Director

**Applicant and Employer**

### CONSENT

**ON** or about April 9, 2003, the Deputy Superintendent of Financial Services caused to be served on The Seagram Museum a Notice of Proposal dated April 8, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Pension Plan for Salaried Employees of The Seagram Museum, Registration No. 478131 (the "Plan"), in the amount of \$158,100 as of July 1, 1997, plus any adjustments for investment earnings or losses and expenses, to the date of payment to The Seagram Museum.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Pension Plan for Salaried Employees of The Seagram Museum, Registration No. 478131, of \$158,100 as of July 1, 1997, subject to adjustment for investment earnings or losses and expenses, to the date of payment to The Seagram Museum.

### **THIS CONSENT IS EFFECTIVE ONLY**

**AFTER** the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement between the applicant and the members, former members, and any other persons entitled to payments from the fund) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

**DATED** at Toronto, Ontario, this 30th day of May, 2003.

Tom Golfetto,  
Director, Pension Plans Branch  
by Delegated Authority from the  
Superintendent of Financial Services

cc: Ms. H  lene Beaulieu,  
Mercer Human Resource Consulting



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Employees of CYRO Canada Inc., Registration No. 402388;**

**TO:** **CYRO Canada Inc.**  
c/o CYRO Industries  
100 Enterprise Drive  
Seventh Floor  
P.O. Box 5055  
Rockaway, New Jersey 07866-5055  
U.S.A.

**Attention:** William Dorcas,  
Manager,  
Benefits Planning/Programs  
**Applicant and Employer**

### CONSENT

**ON** or about April 24, 2003, the Superintendent of Financial Services caused to be served on CYRO Canada Inc. a Notice of Proposal, dated April 22, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Pension Plan for Employees of CYRO Canada Inc., Registration No. 402388 (the "Plan"), to CYRO Canada Inc. in the amount of \$678,472 as at April 21, 2001, adjusted for one-half of the appreciation/depreciation in the plan's assets thereon to the date of payment.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Pension Plan for Employees of CYRO Canada Inc., Registration No. 402388, of \$678,472 as at April 21, 2001, adjusted for one-half of the appreciation/depreciation in the plan's assets thereon to the date of payment, to CYRO Canada Inc.

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Applicant satisfies me that all benefits, benefit enhancements and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

**DATED** at Toronto, Ontario, this 12th day of June, 2003.

Tom Golfetto,  
Director, Pension Plans Branch  
by Delegated Authority from the  
Superintendent of Financial Services  
cc: Frederick W. Carleton

Margarethe Davies





## **Declaration that the Pension Benefits Guarantee Fund Applies to Pension Plans — Subsection 83(1) of the *Pension Benefits Act***

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the Act respecting the **Zettel Metalcraft Ltd. Local 396 CAW Pension Plan (the "Pension Plan")**, Registration Number 0933515;

**TO:** **Morneau Sobeco**  
Deloitte & Touche Inc.  
1500 Don Mills Road  
Toronto ON M3B 3K4

**Attention:** Mr. Al Kiel,  
Partner

**Administrator of the Pension Plan**

**AND TO:** **Zettel Metalcraft Ltd.**  
95 Cousins Drive  
Aurora ON L4G 3H1

**Attention:** Mr. Tim Daley,  
Controller

**Employer**

**AND TO:** **Ernest Leyshon-Hughes C.A.**  
7 Dukes Street West  
Suite 204  
Kitchener ON N2H 6M9

**Attention:** Mr. Ernest Leyshon-Hughes,  
**Trustee in Bankruptcy,**  
**Zettel Metalcraft Ltd.**

**AND TO:** **CAW Local 396**  
205 Placer Court  
Toronto ON M2H 3H9

**Attention:** Mr. Sym Gill,  
**Director**

### **DECLARATION**

#### **WHEREAS:**

1. The Zettel Metalcraft Ltd. Local 396 CAW Pension Plan, Registration No. 0933515, is registered under the Act; and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective January 24, 1997; and
4. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on March 20, 1997, and on July 11, 2002, appointed Morneau Sobeco as Administrator to replace Deloitte & Touche Inc.; and
5. On February 10, 2003, I issued a Notice of Proposal dated February 5, 2003, to Make a Declaration that the Guarantee Fund applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received.

**NOW THEREFORE TAKE NOTICE**, I declare, pursuant to sections 83 and 89 of the Act, that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Supplement to the Actuarial Valuation Report filed by the Administrator indicates an estimated funding deficiency of \$1,095,300 as at May 31, 2002, and an estimated claim against the Guarantee Fund as at May 31, 2002, of \$954,200.00.
2. Ernest Leyshon-Hughes was appointed Trustee in Bankruptcy of Zettel Metalcraft Ltd. on February 6, 1997.



3. The Trustee in Bankruptcy for Zettel Metalcraft Ltd. has advised the Administrator that there are no funds from the estate of Zettel Metalcraft Ltd. to make payments to the Pension Plan.
4. The Administrator has advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the Act and Regulation cannot be satisfied.

**DATED** at North York, Ontario, this 22nd day of April, 2003.

K. David Gordon,  
Deputy Superintendent, Pension Division



## Allocations of Money for the Pension Benefits Guarantee Fund

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** an Allocation by the Superintendent of Financial Services under section 83 of the Act relating to the **Retirement Plan for Employees of Pigott Construction Limited and Participating Companies, Registration Number C-4989;**

**TO:** **Buck Consultants Limited**  
Suite 1500  
95 Wellington Street West  
Toronto ON M5J 2N7

**Attention:** Ms. Wafaa Babcock, F.S.A., F.C.I.A.  
**Administrator**

**AND TO:** **Pigott Construction Ltd.**  
P.O. Box 2309  
Hamilton ON L8N 3G7

**Attention:** W. Grant Dickinson,  
Vice-President, Finance  
**Employer**

### ALLOCATION

**WHEREAS** on the 12th day of July, 2002, I declared, pursuant to sections 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S. O. 1997, c.28 (the "Act"), that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Retirement Plan for Employees of Pigott Construction Limited and Participating Companies, Registration Number C-4989 (the "Plan"); and

**WHEREAS** on the 9th day of September, 2002, I allocated from the Guarantee Fund, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed \$18,040 to provide, together with the Ontario assets, if any, for the benefit entitlement of Colin Holland under the Plan, deter-

mined under subsections 34(5) and 34(6) of the Regulation, and to pay the reasonable administration costs of settling his entitlement; and

**WHEREAS** the allocation was insufficient to provide for the administration costs of the appointed administrator after settlement of the benefit for Colin Holland;

**NOW THEREFORE** I shall allocate from the Guarantee Fund and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed \$705 to pay the balance of the reasonable administration costs of settling Colin Holland's benefit. Any money allocated from the Guarantee Fund but not required to provide such costs shall be returned to the Guarantee Fund.

**DATED** at Toronto, Ontario, this 10th day of March, 2003.

K. David Gordon,  
Deputy Superintendent, Pensions  
Financial Services Commission of Ontario





**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended, (the "Act");

**AND IN THE MATTER OF** a Declaration by  
the Superintendent of Financial Services under  
Section 83 of the Act respecting the **Pension  
Plan for Unionized Employees of  
Northern Globe Building Materials, Inc.  
(Brantford Division), Registration  
Number 680421 (the "Plan")**;

**TO:** **Morneau Sobeco**  
895 Don Mills Road, Suite 700  
One Morneau Sobeco Centre  
Toronto ON M3C 1W3

**Attention:** Mr. David R. Kearney,  
Senior Consultant  
**Appointed Administrator  
of the Plan**

**AND TO:** **Northern Globe Building  
Materials, Inc.**  
2230 Indianapolis Blvd.  
Whiting IN 46394

**Attention:** John F. Dombrow,  
Director, Human Resources  
**Employer**

**AND TO:** **United Steelworkers  
of America**  
District 6  
1031 Barton Street East  
Hamilton ON L8L 3E3

**Attention:** Bryan Adamczyk  
**Union Representative for  
the Members of the Plan**

## ALLOCATION

**WHEREAS** on the 9th day of April, 2001, I  
declared, pursuant to sections 83 and 89 of the  
Act, that the Pension Benefits Guarantee Fund  
(the "Guarantee Fund") applies to the Plan;

**NOW THEREFORE** I shall allocate from the  
Guarantee Fund and pay to the Plan, pursuant  
to subsection 34(7) of R.R.O. 1990, Reg. 909,  
under the Act (the "Regulation"), an amount  
not to exceed \$214,595 determined as of April  
30, 2003, to provide, together with the Ontario  
assets of the Plan, for the benefits determined in  
accordance with section 34 of the Regulation,  
and to pay the reasonable administration costs  
to wind up the Plan. Any money allocated from  
the Guarantee Fund but not required to provide  
such benefits or costs shall be returned to the  
Guarantee Fund.

**DATED** at North York, Ontario, this 22nd day  
of April, 2003.

K. David Gordon,  
Deputy Superintendent, Pensions



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended by (the "Act");

**AND IN THE MATTER OF** a Proposal by the  
Superintendent of Financial Services to Make  
a Declaration under Section 83 of the Act  
respecting the **Zettel Metalcraft Ltd. Local  
396 CAW Pension Plan (the "Pension  
Plan")**, Registration Number 0933515;

**TO:** **Morneau Sobeco**  
1500 Don Mills Road  
Toronto ON M3B 3K4

**Attention:** Mr. Al Kiel,  
Partner

**Administrator of the  
Pension Plan**

### **ALLOCATION**

**WHEREAS** on April 22nd, 2003, I declared,  
pursuant to sections 83 and 89 of the Act, that  
the Pension Benefits Guarantee Fund (the  
"Guarantee Fund") applies to the Pension Plan;

**NOW THEREFORE** I shall allocate from the  
Guarantee Fund and pay to the Pension Plan,  
pursuant to subsection 34(7) of R.R.O. 1990,  
Reg. 909, under the Act (the "Regulation"), an  
amount not to exceed \$954,200 which together  
with the Ontario assets of the Pension Plan, will  
provide for the benefits determined in accor-  
dance with section 34 of the Regulation. Any  
money allocated from the Guarantee Fund but  
not required to provide such benefits shall be  
returned to the Guarantee Fund.

**DATED** at North York, Ontario, this 22nd day  
of April, 2003.

K. David Gordon,  
Deputy Superintendent, Pension Division



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended by (the "Act");

**AND IN THE MATTER OF** a Proposal by the  
Superintendent of Financial Services to Make  
a Declaration under Section 83 of the Act  
respecting the **Non-Contributory Pension  
Plan Covering Hourly Paid Bargaining  
Unit Employees of Algoma Steel Inc. (the  
"Pension Plan")**, Registration Number  
0335802;

**TO:** **Morneau Sobeco**  
1500 Don Mills Road  
Toronto ON M3B 3K4

**Attention:** Mr. Robin Pond, MBA, CFA  
Principal  
**Administrator of the  
Pension Plan**

#### **INTERIM ALLOCATION**

**WHEREAS** on December 17, 2002, I declared,  
pursuant to sections 83 and 89 of the Act, that  
the Pension Benefits Guarantee Fund (the  
"Guarantee Fund") applies to the Pension Plan;

**NOW THEREFORE** I shall allocate from the  
Guarantee Fund and pay to the Pension Plan,  
pursuant to subsection 34(7) of R.R.O. 1990,  
Reg. 909, under the Act (the "Regulation"), an  
amount not to exceed \$59,500,000 which  
together with the Ontario assets of the Pension  
Plan, will partially provide for the benefits  
determined in accordance with section 34 of  
the Regulation. Any money allocated from the  
Guarantee Fund but not required to provide such  
benefits shall be returned to the Guarantee Fund.

**DATED** at Toronto, Ontario, this 13th day of  
May, 2003.

K. David Gordon,  
Deputy Superintendent, Pensions



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended by (the "Act");

**AND IN THE MATTER OF** a Proposal by the  
Superintendent of Financial Services to Make  
a Declaration under Section 83 of the Act  
respecting the **The Algoma Steel Inc.  
Salaried Employees Pension Plan for  
Employees in Canada (the "Pension  
Plan")**, Registration Number 0335810;

**TO:** **Morneau Sobeco**  
1500 Don Mills Road  
Toronto ON M3B 3K4

**Attention:** Mr. Robin Pond, MBA, CFA  
Principal  
**Administrator of the  
Pension Plan**

#### **INTERIM ALLOCATION**

**WHEREAS** on December 17, 2002, I declared,  
pursuant to sections 83 and 89 of the Act, that  
the Pension Benefits Guarantee Fund (the  
"Guarantee Fund") applies to the Pension Plan;

**NOW THEREFORE** I shall allocate from the  
Guarantee Fund and pay to the Pension Plan,  
pursuant to subsection 34(7) of R.R.O. 1990,  
Reg. 909, under the Act (the "Regulation"), an  
amount not to exceed \$28,000,000 which  
together with the Ontario assets of the Pension  
Plan, will partially provide for the benefits  
determined in accordance with section 34 of  
the Regulation. Any money allocated from the  
Guarantee Fund but not required to provide such  
benefits shall be returned to the Guarantee Fund.

**DATED** at Toronto, Ontario, this 13th day of  
May, 2003.

K. David Gordon,  
Deputy Superintendent, Pensions



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Declaration  
by the Superintendent of Financial Services  
under section 83 of the Act relating to the  
**Hudson Bay Diecasting Limited Hourly  
Employees Retirement Income Plan,  
Registration Number 362178 (the "Plan");**

**TO:** **Morneau Sobeco**  
895 Don Mills Road, Suite 700  
One Morneau Sobeco Centre  
Toronto ON M3C 1W3

**Attention:** Mr. David R. Kearney  
**Appointed Administrator  
of the Plan**

**AND TO:** **Hudson Bay Diecasting  
Limited**  
230 Orenda Road  
Brampton ON L6T 1E9

**Attention:** Mr. Dwight W. Rollins  
**Employer**

**AND TO:** **National Automobile,  
Aerospace, Transportation  
and General Workers  
Union of Canada  
(CAW — Canada),  
Local 1285**  
205 Placer Court  
Toronto ON M2H 3H9

**Attention:** Jeff Wareham,  
National Representative,  
Pension and Benefits Department  
**Union Representing Members  
of the Plan**

### **ALLOCATION**

**WHEREAS** on the 24th day of September,  
2001, the Superintendent of Financial Services  
declared, pursuant to sections 83 and 89 of the  
Act, that the Pension Benefits Guarantee Fund  
(the "Guarantee Fund") applies to the Hudson  
Bay Diecasting Limited Hourly Employees  
Retirement Income Plan, Registration Number  
362178 (the "Plan");

**NOW THEREFORE** I shall allocate from the  
Guarantee Fund and pay to the Plan, pursuant  
to subsection 34(7) of R.R.O. 1990, Reg. 909,  
under the Act (the "Regulation"), an amount  
not to exceed \$2,053,342 to provide, together  
with the Ontario assets of the Plan, the benefits  
determined in accordance with section 34 of  
the Regulation, and to pay the reasonable  
administration costs to wind up the Plan. Any  
money allocated from the Guarantee Fund but  
not required to provide such benefits or costs  
shall be returned to the Guarantee Fund.

**DATED** at Toronto, Ontario, this 16th day of  
May, 2003.

K. David Gordon,  
Deputy Superintendent, Pensions  
Financial Services Commission of Ontario



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Declaration by the Superintendent of Financial Services under section 83 of the Act relating to the **Hudson Bay Diecasting Limited Salaried Employees Retirement Income Plan, Registration Number 380170 (the "Plan")**;

**TO:** **Morneau Sobeco**  
895 Don Mills Road, Suite 700  
One Morneau Sobeco Centre  
Toronto ON M3C 1W3

**Attention:** Mr. David R. Kearney  
**Appointed Administrator  
of the Plan**

**AND TO:** **Hudson Bay Diecasting  
Limited**  
230 Orenda Road  
Brampton ON L6T 1E9

**Attention:** Mr. Dwight W. Rollins  
**Employer**

### ALLOCATION

**WHEREAS** on the 24th day of September, 2001, the Superintendent of Financial Services declared, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Hudson Bay Diecasting Limited Salaried Employees Retirement Income Plan, Registration Number 380170 (the "Plan");

**NOW THEREFORE** I shall allocate from the Guarantee Fund and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed \$301,643 to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34

of the Regulation, and to pay the reasonable administration costs to wind up the Plan. Any money allocated from the Guarantee Fund but not required to provide such benefits or costs shall be returned to the Guarantee Fund.

**DATED** at Toronto, Ontario, this 16th day of May, 2003.

K. David Gordon,  
Deputy Superintendent, Pensions  
Financial Services Commission of Ontario



## FINANCIAL SERVICES TRIBUNAL ACTIVITIES

### Appointments of Financial Services Tribunal Members

Name and O.C.	Effective Appointment Date	Expiry Date
<b>Milczynski</b> , Martha (Chair)		
O.C. 1622/2001	June 20, 2001	June 19, 2004
O.C. 1665/99	October 6, 1999	July 7, 2001
O.C. 1808/98	July 8, 1998	October 6, 1999
<b>McNairn</b> , Colin (Vice-Chair)		
O.C. 1623/2001	June 20, 2001	June 19, 2004**
O.C. 1809/98	July 8, 1998	July 7, 2001
<b>Corbett</b> , Anne (Vice-Chair Acting)		
O.C. 1438/2001	June 20, 2001	June 19, 2004**
<b>Ashe</b> , Kevin		
O.C. 1510/2002	September 26, 2002	September 25, 2005
<b>Bharmal</b> , Shiraz Y.M.		
O.C. 1511/2002	September 9, 2002	September 8, 2005
<b>Erlichman</b> , Louis		
O.C. 439/2002	January 23, 2002	January 22, 2005**
O.C. 2527/98	December 9, 1998	December 8, 2001
O.C. 1592/98	June 17, 1998	December 16, 1998
<b>Gavin</b> , Heather		
O.C. 440/2002	January 23, 2002	January 22, 2005**
O.C. 11/99	January 13, 1999	January 12, 2002
<b>Litner</b> , Paul W.		
O.C. 1512/2002	September 9, 2002	September 8, 2005
<b>Martin</b> , Joseph P.		
O.C. 1626/2001	June 20, 2001	June 19, 2004**
O.C. 1810/98	July 8, 1998	July 7, 2001
<b>Moore</b> , C.S. (Kit)		
O.C. 1625/2001	June 20, 2001	June 19, 2004**
O.C. 1591/98	July 1, 1998	June 30, 2001
<b>Short</b> , David A.		
O.C. 2118/2001	October 24, 2001	October 23, 2004**
<b>Vincent</b> , J. David		
O.C. 2119/2001	October 24, 2001	October 23, 2004**

**\*\*Or on the day FSCO/OSC merges, if earlier.**



## Pension Hearings Before the Financial Services Tribunal

### **Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., Registration Number 344002, FST File Number P0130-2000;**

On October 31, 2000, Imperial Oil Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated October 3, 2000, proposing to refuse to approve Partial Wind Up Reports in respect of two Plans of which Imperial Oil is the Administrator.

The stated reasons for the proposed refusal include the failure of each Wind Up Report to do the following: (a) reflect the liabilities associated with all of the members of the Plan whose employment was terminated by Imperial Oil during the wind up period; (b) apply the grow-in provisions of section 74 of the *Pension Benefits Act* in a proper manner; (c) provide benefits in accordance with elections made, as required under subsection 72(1) of the *Pension Benefits Act*, among various options including those available as a result of partial wind up; and (d) provide for the distribution of assets related to the partial wind up group.

A pre-hearing conference was held on June 19, 2001. At the pre-hearing conference, the Superintendent agreed to amend the Notice of Proposal in this matter to delete reference to (d) above.

A hearing and preliminary motion with respect to answers to interrogatories was held on July 25, 2001. The Tribunal ordered the Superintendent to respond to the first and second set of the Applicant's interrogatories within six weeks of the date of the order subject to the qualification that the Superintendent need not produce any documents or reveal any communications to which the law of privilege applies. Written

Reasons for Order dated September 10, 2001, were published in Volume 11, Issue 1 of the Pension Bulletin.

A continuation of the pre-hearing conference was held on December 20, 2001. The pre-hearing conference was adjourned to allow the parties to bring motions with respect to answers to interrogatories. On July 24, 2002, the Tribunal heard two motions. The Applicant's notice of motion dated June 7, 2002, asked for an order of the Tribunal directing the Superintendent to provide further and better answers to some of its interrogatories. The Tribunal made an order directing the Superintendent to respond to certain of the interrogatories but with some modifications. Reasons for Order dated September 11, 2002, were published in Volume 12, Issue 1 of the Pension Bulletin. The time for the Superintendent's response under this Order was extended by Consent Order dated October 22, 2002.

The Superintendent's notice of motion dated June 5, 2002, asked for an order of the Tribunal directing the Applicant to answer those interrogatories it had served on the Applicant on October 11, 2001, that remained outstanding. The Tribunal made an order directing the Applicant to respond to certain of the interrogatories but with some modifications. The Reasons for Order dated September 20, 2002, were published in Volume 12, Issue 1 of the Pension Bulletin.

The pre-hearing conference scheduled to resume on December 18, 2002, was rescheduled to February 27, 2003, and was further adjourned to April 28, 2003, at the request of the parties, due to ongoing settlement discussions. The April 28th pre-hearing conference did not proceed at the request of the parties. On May 30, 2003, the parties asked that the matter continue



to be adjourned *sine die* pending resolution of the issues in the proceeding, and advised they anticipate that the request for hearing will be withdrawn in September 2003.

**Marshall-Barwick (formerly Marshall Steel Limited), Registration Number 0968081, FST File Number P150-2001;**

On January 16, 2001, Marshall-Barwick Inc. (formerly Marshall Steel Limited) requested a hearing in respect of the Superintendent's Notice of Proposal dated December 12, 2000. The Superintendent is proposing to refuse to approve a Partial Wind Up Report (the "Report") as at August 28, 1992, respecting the Retirement Plan for Salaried Employees of Marshall Steel Limited and Associated Companies in relation to employees who ceased to be employed by Marshall Steel Limited as a result of the closure of its plant in Milton, Ontario. The Superintendent's basis for the Notice of Proposal is that the Report does not protect the interests of all those affected by the partial wind up, specifically Mr. Jeffrey G. Marshall, an employee who was terminated during the wind up period. On June 4, 2001, Jeffrey G. Marshall applied for party status.

A pre-hearing conference was held on August 13, 2001, at which time Mr. Marshall was granted full party status. The hearing scheduled for November 29 and 30, 2001, was adjourned as a result of a joint request made by the parties on November 6, 2001. The reason for the request was due to the applicant providing Mr. Marshall with actuarial data in respect of Mr. Marshall's benefit entitlements. Mr. Marshall required additional time to obtain expert advice in respect of the information. The hearing was held on September 9, 2002. In its Reasons dated November 29, 2002, the Tribunal affirmed the Superintendent's Notice of Proposal and directed the company, as administrator, to file a revised

Partial Wind Up Report that includes Mr. Marshall in the partial wind up group. The Reasons for Decision dated November 29, 2002, were published in Volume 12, Issue 2 of the Pension Bulletin.

The Applicant filed a notice of appeal dated December 20, 2002, with the Divisional Court of the Tribunal's Order dated November 29, 2002.

On December 30, 2002, Mr. Marshall filed submissions requesting that the Tribunal award his costs to be paid by the Applicant. Reasons for Decision dated July 7, 2003, are published in this bulletin on page 79.

**Pension Plan for the Employees of Dymment Limited, Registration Number 0242735, FST File Number P0157-2001;**

On April 18, 2001, Dymment Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated March 19, 2001, to make an Order that the Pension Plan for the Employees of Dymment Limited, Registration Number 0242735, be wound up in full effective August 23, 1996, and to refuse to approve the actuarial report prepared in April 1997 in relation to the partial wind up of the Plan as at August 23, 1996.

The basis for the Notice of Proposal was that as of August 23, 1996, there were no remaining active members in the Plan and Dymment was no longer required to make contributions. The basis for refusing to approve the actuarial report is that the report does not meet the requirements of the *Pension Benefits Act* and the Regulations and does not protect the interests of the members or former members of the Plan.

On May 22, 2001, Mr. Mobeen Khaja applied for party status. Mr. Khaja was part of a group of employees who were subject to the partial wind up of the Plan, and would be affected by a full wind up of the Plan.





A pre-hearing conference was held on July 13, 2001, at which Mr. Khaja was joined as a party to the proceeding. Hearing dates originally scheduled for January 24 and 25, 2002, were changed to April 15 and 16, 2002, and were subsequently adjourned at the parties' request to allow settlement discussions to continue.

On April 29, 2003, the request for hearing was withdrawn as the parties reached a settlement.

**Consumers Packaging Inc., Pension Plan II, Registration Number 0998682, FST File Number P162-2001;**

On May 17, 2001, Consumers Packaging Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated April 20, 2001, to Refuse to Approve a Partial Wind Up Report filed by Consumers Packaging Inc. on May 19, 2000, with respect to a partial wind up of the Consumers Packaging Inc. Pension Plan II, Registration Number 0998682, as at May 7, 1997, and to Refuse to Register an Amendment to such Pension Plan filed by Consumers Packaging Inc. on May 19, 2000, titled Amendment # 2.

The basis for the Notice of Proposal was that Consumers Packaging Inc. filed a Partial Wind Up Report (the "Report") in 1997. The Superintendent issued two Notices of Proposal in 1999 ordering Consumers Packaging Inc. to accept as members of the Plan certain replacement call-in employees and refusing to approve the 1997 Partial Wind Up Report (the "Report") on the grounds that the replacement call-in employees were not included in the Report and that "grow-in" to plant closure benefits was not provided to unionized hourly employees affected by the partial wind up. Consumers Packaging Inc. requested a hearing before the Financial Services Tribunal with respect to both Notices of Proposal. The hearing concerning the call-in

employees was settled by the parties and Consumers Packaging Inc. accepted as members of the Plan those replacement call-in employees who met certain conditions. The hearing request regarding the "grow-in" benefits was withdrawn. Consumers Packaging Inc. was ordered to file an amended Partial Wind Up Report. In addition, in 1997, Consumers Packaging Inc. filed an application to register Amendment # 2 to the Plan which provided enhanced bridge benefits to some members.

On May 19, 2000, Consumers Packaging Inc. filed a revised Partial Wind Up Report (the "revised Report") and a revised application to register Amendment #2 (the "revised Amendment"). The Superintendent issued the April 20, 2001 Notice of Proposal stating reasons that the revised Amendment is void pursuant to clause 14(1)(c) of the *Pension Benefits Act*, and that the revised Report does not meet the requirements of the *Pension Benefits Act*, pursuant to subsection 70(5), because the commuted value of the pension benefits and ancillary benefits for the affected members is calculated based on the revised Amendment, which is void under the Act. The revised Report does not protect the interests of the members and former members of the Plan for the same reason.

The Superior Court of Justice, Commercial List, issued an Order, dated May 23, 2001, stating that any suit, action, enforcement process, extra-judicial proceeding, regulatory, administrative or other proceeding against or in respect of Consumers Packaging Inc. already commenced be stayed and suspended until and including June 22, 2001. A further Order was issued on June 18, 2001, extending the stay period until August 15, 2001 and again until October 1, 2001. On October 1, 2001, a Pension Assumption Agreement was made. On February 13, 2002, an Application for Party Status was



filed by the United Steelworkers of America (Local 203G). At the pre-hearing conference on February 19, 2002, full party status was granted.

A motion brought by Consumers Packaging for an order compelling the Superintendent to answer certain interrogatories was heard on April 18, 2002, at which time the motion was dismissed.

The hearing in the matter was held on July 29 and 31, 2002. In its Reasons dated November 29, 2002, the Tribunal directed the Superintendent to carry out the Notice of Proposal dated April 20, 2001, after having found the 1997 Plan Amendment establishing the Enhanced Bridge to be valid, effective and binding upon the Company (the Enhanced Bridge forming part of the Plan). The Reasons for Decision dated November 29, 2002, were published in Volume 12, Issue 2 of the Pension Bulletin.

On December 17, 2002, a request to make submissions on the issue of costs was filed by the United Steelworkers of America, Local 203G. On April 9, 2003, the United Steelworkers of America, Local 203G, advised it would not be filing submissions as the parties resolved the issue of costs.

**CBS Canada Co., Westinghouse Canada Inc. Pension Plan, Registration Numbers 348409 and 526632, FST File Number P164-2001;**

On June 8, 2001, CBS Canada Co., the successor to Westinghouse Canada Inc., requested hearings in connection with the Superintendent's Notices of Proposal dated May 9 and 15, 2001, to Refuse to Approve various Partial Wind Up Reports in respect of the Salaried Employees Pension Plan and the Hourly Paid Employees Pension Plan of Westinghouse Canada Inc. The partial wind ups were triggered by the closure by ABB Canada Inc. of its plants in London,

Ontario; St. Jean, Quebec; and Burlington, Ontario, at which it carried on businesses acquired from Westinghouse Canada Inc., and by the closure by Westinghouse Canada Inc. of its Motors Division plant in Hamilton, Ontario.

The basis for each Notice of Proposal was that the relevant Partial Wind Up Report failed to provide employer request early retirement benefits and related bridge benefits, contemplated by each Plan, to all members of the partial wind up group whose age plus years of service equaled at least 55 and because the Report failed to provide for the distribution of surplus relating to the partial wind up group.

On June 19, 2001, CAW Canada, which represented the employees who were members of the Westinghouse Hourly Paid Employees Pension Plan, filed an Application for Party Status in these proceedings. At a pre-hearing conference on November 5, 2001, CAW Canada was granted party status in the proceedings concerning the Notices of Proposal relating to the Hourly Employees Pension Plan and was given limited rights to participate in the proceedings concerning the Notices of Proposal relating to the Salaried Employees Pension Plan. The various proceedings were directed to be heard together.

At a continuation of the pre-hearing conference, held on November 29, 2001, a hearing was scheduled for February 4-5, 2002, to deal with several jurisdictional issues to be brought on by motion of CBS Canada Co. Those issues included the following:

1. whether the Superintendent was entitled to rescind the initial approvals that she had given with respect to several of the Partial Wind Up Reports, for failure to adhere to the doctrine of fairness, and for which she subsequently substituted Notices of Proposal to Refuse Approval;



2. whether the Tribunal could direct the Superintendent to refuse approval of certain of the Wind Up Reports on the basis of a ground that was not specifically recited in the relevant Notices of Proposal;
3. whether the Tribunal could determine the responsibility for any special benefits payable to the former Westinghouse employees at the facilities that were closed by ABB Inc. as between CBS Canada Co. and ABB Canada Inc.; and
4. whether the Tribunal could order that ABB Canada Inc. be added as a party to the proceedings against its will.

At the hearing on the jurisdictional motion, the Tribunal refused to order that ABB Canada Inc. be added as a party, but otherwise reserved its determination of the issues raised by the motion.

Reasons for Decision on the jurisdictional motion dated March 4, 2002 were published in Volume 11, Issue 3 of the Pension Bulletin.

The Applicant filed a notice of appeal dated April 3, 2002, with the Divisional Court of the Tribunal's Order dated March 4, 2002.

A settlement conference was held on August 7-8, 2002. On October 4, 2002, a motion hearing was held with respect to the Applicant's notice of motion dated September 25, 2002, asking for an order that the CAW respond to the Applicant's interrogatories dated September 25, 2002. At the motion hearing the parties agreed that the motion could be dealt with by way of a consent order and such an order was subsequently issued.

On November 21, 2002, the December hearing dates were adjourned at the request of the parties except for December 5, 2002, pending settlement discussions between the parties. On December 5, 2002, the matter resumed as a pre-hearing conference and new hearing dates were scheduled for March 31, 2003, April 1-3, 2003 and May 6-8,

2003. On March 12, 2003, the parties consented to an adjournment of all the hearing dates except April 3, and May 7-8, 2003, as the parties were entering into minutes of settlement.

On April 3, 2003, an Order of the Tribunal was issued approving the minutes of settlement which, among other things, provided for the withdrawal of the notice of appeal dated April 3, 2002. The Order is published in this bulletin on page 70.

On May 7, 2003, the parties sought direction from the Tribunal on implementing the settlement reached. The issue was whether CBS Canada Co. was obliged to include members in its partial wind up that the successor employer, ABB Canada Inc., did not include in its partial wind up. On May 16, 2003, the Tribunal issued its Reasons for Decision and ordered CBS Canada Co. to include certain members in its partial wind up. The Reasons for Decision dated May 16, 2003, are published in this bulletin on page 72.

**Crown Cork & Seal Canada Inc., Registration Numbers 474205, 595371 & 338491, FST File Number P0165-2001;**

On June 29, 2001, Crown Cork & Seal Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated May 29, 2001, to refuse to consent to a transfer of assets proposed by Crown Cork & Seal Canada Inc. from the Crown Cork & Seal Canada Inc. Pension Plan for Salaried Employees, Registration Number 0474205 and the Pension Plan for Clerical Employees of Crown Cork & Seal Canada Inc., Registration Number 0595371, into the Crown Cork & Seal Canada Inc. Pension Plan for Employees, Registration Number 338491. The basis for the refusal is that the asset transfer does not protect the pension benefits and other benefits of the members and former members of the Plans.





At the request of both parties a settlement conference was held on October 30, 2001, prior to the scheduling of a pre-hearing conference. At the settlement conference the parties agreed to adjourn the matter *sine die* pending discussions between the parties.

On February 11, 2003, counsel for the Superintendent requested a pre-hearing conference be scheduled as the parties were unable to resolve the issues in this matter. At the pre-hearing conference on May 12, 2003, the parties stated they would contact the Registrar to resume the pre-hearing conference if they did not resolve the issues at a settlement meeting on May 26, 2003. On June 20, 2003, the parties advised that they expect the settlement discussions to continue for the next two months, and they will advise on the status by the end of August 2003.

**The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration Number 239475, FST File Number P0172-2001;**

On September 20, 2001, The Corporation of the City of Kitchener requested a hearing regarding the Superintendent's Notice of Proposal dated August 23, 2001, to refuse to consent to the application for payment of surplus to the employer, pursuant to section 78(1) of the *Pension Benefits Act*, from The City of Kitchener Pension Plan for Fire Department Employees, Registration No. 239475.

A pre-hearing conference was held on April 25, 2002, at which time the parties agreed to a settlement conference. The settlement conference date of July 16, 2002 was rescheduled at the parties' request and was held on September 4, 2002. At the settlement conference the matter was adjourned *sine die*.

On February 7, 2003, counsel for the Superintendent requested the pre-hearing conference be reconvened. The pre-hearing conference was held on April 17, 2003. The hearing is scheduled for July 14, 2003.

**Marcel Brousseau, Electrical Industry of Ottawa Pension Plan, Registration Number 0586396, FST File Number P0183-2002;**

On February 20, 2002, Marcel Brousseau, a member of the Plan, requested a hearing regarding the Superintendent's Notice of Proposal dated January 22, 2002, to refuse to make an Order in respect of the Plan Administrator's determination, pursuant to section 87 of the *Pension Benefits Act*, of Mr. Brousseau's pensionable service under the terms of the Plan.

A pre-hearing conference was held on August 27, 2002. At the pre-hearing conference, the Superintendent raised a jurisdictional issue. The parties agreed that the issue on the motion will be, "Given the November 19, 2001 decision of the Superior Court of Justice in Court File No. 01-CV-18268, does the Tribunal have jurisdiction to proceed in the circumstances of this case?". The motion was heard on November 29, 2002. The decision is reserved.

**Donna Marie Sloan, Ontario Teachers' Pension Plan, Registration Number 0345785, FST File Number P0188-2002;**

A survivor pre-retirement death benefit that was being paid to Donna Marie Sloan under the Plan was discontinued when the Ontario Pension Plan Board, the Administrator of the Plan, concluded that she was living separate and apart from her husband, the Plan member, at the time of his death, thereby disqualifying her from receiving the benefit. On March 4, 2002, the Superintendent issued a Notice of Proposal Refusing to Make an Order, pursuant



to section 87 of the *Pension Benefits Act*, requiring the Administrator to take action in respect of the Plan by reinstating the death benefit.

On April 2, 2002, Donna Marie Sloan requested a hearing. On April 23, 2002, the Ontario Teachers' Pension Plan Board filed an Application for Party Status. The pre-hearing conference scheduled for August 20, 2002 was adjourned *sine die* on consent, pending settlement discussions between the parties.

On April 15, 2003, a Memorandum of Settlement was filed with the Tribunal which provides the parties' agreement to a dismissal of the hearing on consent and without costs.

**Kerry (Canada) Inc., Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0191-2002;**

On May 22, 2002, Kerry (Canada) Inc., requested a hearing regarding the Superintendent's Notice of Proposal dated April 22, 2002, proposing to make an Order that Kerry (Canada) Inc.:

- reimburse the pension fund (the "Fund") of the Plan for all amounts paid out of the Fund from January 1, 1985 for expenses that were not incurred for the exclusive benefit of the members and retired members of the Plan;
- reimburse the Fund for all income that would have been earned by the Fund if those expenses had not been paid from the Fund; and
- amend the Plan and the trust (the "Trust") in respect of the Fund so that the provisions of the Plan and the Trust relating to the deduction of expenses from the Fund are consistent with the 1954 versions of the Plan and the Trust.

On June 10, 2002, an Application for Party Status was filed by Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter,

R. A. Varney and Bill Fitz, being the members of the DCA Employees Pension Committee.

At the pre-hearing conference on October 15, 2002, full party status was granted to the individuals comprising the DCA Employees Pension Committee, representing the members and retired members of the Plan, and it was agreed that the hearing in this matter would be held together with the hearing in P0192-2002.

The pre-hearing conference was adjourned to allow the parties to bring certain motions with respect to disclosure. At the motion hearing on December 6, 2002, an order for disclosure was issued against Kerry (Canada) Inc.

On January 22, 2003, the pre-hearing conference resumed and was further adjourned to allow a further disclosure motion to be brought by the DCA Employees Pension Committee. The motion was heard on March 27, 2003, at which time it was dismissed.

At a resumption of the pre-hearing conference on May 5, 2003, the parties agreed to attend a settlement conference to deal with the issue of expenses. The settlement conference scheduled for July 7, 2003, was rescheduled to August 19, 2003. The hearing is scheduled for October 27, 28, 29, 2003.

**Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter, R.A. Varney and Bill Fitz being the members of the DCA Employees Pension Committee, Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0192-2002;**

On May 27, 2002, William Fitz on behalf of the DCA Employees Pension Committee, requested a hearing regarding the Superintendent's Notice of Proposal, dated April 22, 2002, proposing to refuse to make an Order that:





- the Plan be wound up, effective December 31, 1994;
- Kerry (Canada) Inc. pay to the pension fund (the "Fund") of the Plan all employer contributions for which a contribution holiday was taken since January 1, 1985, together with income that would have been earned by the Fund if those contributions had been made; and
- registration of the Revised and Restated Plan Text dated January 1, 2000, and all amendments to the Plan included therein, be refused.

On June 5, 2002, an Application for Party Status was filed by Kerry (Canada) Inc.

At the pre-hearing conference on October 15, 2002, full party status was granted to Kerry (Canada) Inc., and it was agreed that the hearing in this matter would be held together with the hearing in P0191-2002. The pre-hearing conference was adjourned to allow the parties to bring certain motions with respect to disclosure. At the motion hearing on December 6, 2002, three orders for disclosure were issued, one against Kerry (Canada) Inc., one against the DCA Employees Committee and one against the Superintendent.

On January 22, 2003, the pre-hearing conference resumed and was further adjourned to allow a further disclosure motion to be brought by the DCA Employees Pension Committee. The motion was heard on March 27, 2003, at which time it was dismissed.

On June 5, 2003, the pre-hearing conference resumed to deal with the framing of the "partial wind-up issue." The DCA Employees Pension Committee indicated that it would be bringing a motion for an Order that would add an issue to or otherwise amend the matters in issue. That motion and another motion by Kerry (Canada) Inc. to amend the "partial wind up

issue" were heard on June 25, 2003. At the hearing, the parties agreed on a revised wording of the "partial wind up issue," and it was ordered that the statement of the issues in the proceeding be amended accordingly.

The hearing is scheduled for October 27, 28, 29, 2003.

**Slater Steel Inc. Pension Plan for Corporate Employees and Salaried Employees of the Hamilton Specialty Bar Division, Registration Number 308338, FST File Number P0203-2002;**

On October 31, 2002, Slater Steel Inc. requested a hearing regarding the Superintendent's Notice of Proposal dated September 27, 2002, to make an Order under section 69(1)(d) of the *Pension Benefits Act*, that the Plan be wound up in part in relation to those members and former members of the Plan who ceased to be employed by Slater Steel Inc. effective from March 13, 1998 to January 26, 2000, as a result of the reorganization of the business of Slater Steel Inc.

On November 7, 2002, an Application for Party Status was filed by John Hughes.

At the pre-hearing conference on February 11, 2003, full party status was granted to John Hughes. At the pre-hearing conference, Slater Steel Inc. and the Superintendent indicated that they would be bringing motions with respect to disclosure. On May 13, 2003, the parties agreed to adjourn the May 14, 2003 motion date, to permit the parties time to resolve the disclosure issues altogether or at least narrow the issues to be determined by the Tribunal. The motion is rescheduled to August 7, 2003.

Hearing dates are scheduled for October 8-10, 15-16, 2003 and December 4-5, 2003.

On June 2, 2003, an Order was issued by the Ontario Superior Court of Justice, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C.





1985, c. C-36. The Order includes a stay of proceedings until July 2, 2003, or until further Order of the Court.

**George Polygenis, Public Service Pension Plan, Registration Number 0208777, FST File Number P0204-2002;**

On November 12, 2002, George Polygenis requested a hearing regarding the Superintendent's Notice of Proposal dated October 11, 2002, to refuse to make an Order, under section 87(1) of the Act, that the Pension Policy Committee of the Ontario Pension Board reconsider its decision denying a disability pension to the Applicant under section 14(1) of the Public Service Pension Plan.

On November 26, 2002, an Application for Party Status was filed by the Ontario Pension Board.

At a pre-hearing conference on January 27, 2003, full party status was granted to the Ontario Pension Board, and the parties agreed to a settlement conference. The settlement conference was held on February 10, 2003 and is to continue at some future date with the participation of Mr. Polygenis' employer as well as the expected parties.

It was determined at the pre-hearing conference that a preliminary motion will be heard to determine "What degree of deference should the Tribunal exercise in reviewing the decision of the Board denying the Applicant entitlement to a disability pension"? The motion was scheduled for March 26, 2003. On March 14, 2003, the parties agreed to adjourn the motion hearing date *sine die*.

On May 29, 2003, the parties consented to adjourn the June 11, 2003 hearing date *sine die*, pending finalization of a settlement.

**Barbara Lewis, Retirement Plan for Unionized Employees of Donohue Forest Products Inc., Pulp and Paper Divisions — Thorold Sector, Registration Number 0294496, FST File Number P0207-2002;**

On November 18, 2002, Barbara Lewis requested a hearing regarding the Superintendent's Notice of Proposal dated November 8, 2002, to refuse to make an order under section 87(2)(a) and (c) of the Act, requiring Donohue Forest Products Inc. to comply with sections 37(3)(b) and 48(1) of the Act and the terms of the Plan in the calculation of the pre-retirement death benefits payable from the Plan to Barbara Lewis, spouse of the late Harold Lewis.

On February 6, 2003, an Application for Party Status was filed by Abitibi-Consolidated Company of Canada (formerly Donohue Forest Products Inc.). At the pre-hearing conference on February 21, 2003, full party status was granted to Abitibi-Consolidated Company of Canada.

On May 12, 2003, a motion for disclosure brought by the Applicant was heard. The motion was dismissed.

The hearing is scheduled for July 2, September 22, 23 and 25, 2003.

**Ontario Teachers' Pension Plan Board, Ontario Teachers' Pension Plan, Registration Number 0345785, FST File Number P0217-2003;**

On February 25, 2003, the Ontario Teachers' Pension Plan Board requested a hearing regarding the Superintendent's Notice of Proposal dated January 8, 2003, to make an Order under sections 87(2)(a) and (c) of the Act, requiring the administrator of the Plan to pay Ronald A. Wilson, a former member of the Plan, his pension in the form of a joint and survivor pension in accordance with section 44(1) of the Act.

On March 20, 2003, an Application for Party Status was filed by Jane Kalbfleisch-Wilson, the former spouse of Ronald A. Wilson. At the pre-hearing conference date on May 26, 2003, full party status was granted to Jane Kalbfleisch-Wilson.

On June 16, 2003, an Application for Party Status was filed by Ronald A. Wilson. At a resumption of the pre-hearing conference on June 23, 2003, full party status was granted to Ronald A. Wilson.

The hearing is scheduled for September 24, 2003.

**Slater Stainless Corp. Pension Plan for Slater Stainless Corp. Members of the National Automobile Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Registration Number 561456, FST File Number P0220-2003;**

On March 17, 2003, Slater Stainless Corp. requested a hearing regarding the Superintendent's Notice of Proposal dated February 17, 2003, to make an Order pursuant to section 88 of the Act, requiring the preparation of a new valuation report for the Pension Plan for Slater Stainless Corp. Members of the National Automobile Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Registration Number 561456.

The pre-hearing conference scheduled for June 16, 2003 did not proceed. On June 2, 2003, an Order was issued by the Ontario Superior Court of Justice, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of proceedings until July 2, 2003, or until further Order of the Court.

**Slater Stainless Corp. Pension Plan for Slater Stainless Corp. Members of the United Steel Workers of America (Local 7777), Registration Number 561464, FST File Number P0221-2003;**

On March 17, 2003, Slater Stainless Corp. requested a hearing regarding the Superintendent's Notice of Proposal dated February 17, 2003, to make an Order pursuant to section 88 of the Act, requiring the preparation of a new valuation report for the Pension Plan for Slater Stainless Corp. Members of the United Steel Workers of America (Local 7777), Registration Number 561464.

The pre-hearing conference scheduled for June 16, 2003 did not proceed. On June 2, 2003, an Order was issued by the Ontario Superior Court of Justice, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of proceedings until July 2, 2003, or until further Order of the Court.

**Bestfoods Canada Inc., Pension Plan for Salaried Employees of Bestfoods Canada Inc., Registration Number 240358, FST File Number P0222-2003**

On March 24, 2003, Mr. Gerry O'Connor requested a hearing regarding the Superintendent's Notice of Proposal dated February 25, 2003, to refuse to make an Order, pursuant to section 69 (1) (d) or (e) of the *Pension Benefits Act*, to wind up in part, the Pension Plan for Salaried Employees of Bestfoods Canada Inc., Registration Number 240358.

On April 11, 2003, an Application for Party Status was filed by Unilever Canada Inc., the successor to Bestfoods Canada Inc. At the pre-hearing conference on June 25, 2003, full party status was granted to Unilever Canada Inc. The pre-hearing conference was adjourned to allow the parties the opportunity to resolve some



preliminary issues and to allow the Applicant to bring a motion, as necessary, with respect to disclosure of documents and notice of hearing. A motion hearing is scheduled for September 22, 2003.

**Jane Parker Bakery Limited Retirement Plan for Full-time Bargaining Employees, Registration Number 0400325, FST File Number P0224-2003**

On April 22, 2003, the Great Atlantic & Pacific Company of Canada, Limited, (the "Applicant") requested a hearing regarding the Superintendent's Notice of Proposal dated March 24, 2003, to refuse to consent to the application dated October 2, 2001, made by the Applicant for payment out of the pension fund for the Jane Parker Bakery Limited Retirement Plan for Full-time Bargaining Employees, Registration Number 0400325 (the "Plan"), of an overpayment by the Applicant to the pension fund for the Plan. The overpayment arose as a result of the Applicant's funding of a deficit in the Plan on wind up, which proved to be more than adequate to meet the deficit. The Superintendent maintains that the overpayment constitutes surplus in the Plan and can only be paid out to the Applicant in accordance with s.79 of the *Pension Benefits Act*.

The pre-hearing conference is scheduled for September 10, 2003.





## The following cases are Adjourned *sine die*

- **Revised Retirement Plan for Employees of the Allen-Bradley Division of Rockwell International of Canada (now the Pension Plan for Employees of Rockwell Automation Canada Inc.), Registration Number 321554 and the Pension Plan for Salaried and Management Employees of Reliance Electric Limited, Registration Number 292946, FST File Number P0051-1999;**

At a pre-hearing conference on July 6, 1999, the matter was adjourned *sine die*.

- **The Retirement Plan for Salaried Employees (Consumers Foods) of General Mills Canada, Inc., Registration Number 342042, FST File Number P0058-1999;**

Matter continues to be adjourned *sine die* pending the outcome of the *Monsanto* case.

- **Gerald Menard (Public Service Pension Plan, Registration Number 208777 and the Ontario Municipal Employees' Retirement System "OMERS", Registration Number 345983), FST File Number P0071-1999;**

Matter adjourned *sine die* at a pre-hearing conference on February 21, 2000.

- **Consumers' Gas Ltd., Registration Number 242016, FST File Number P0076-1999;** At the pre-hearing conference on June 27, 2000, the matter was adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Schering-Plough Healthcare Products Canada Inc. Salaried Employees' Pension Plan, Registration Number 297903, FST File Number P0085-1999;**

Matter was adjourned *sine die* pending the outcome of the *Monsanto* case.

- **Eaton Yale Limited Pension Plan for Salaried Employees of Cutler-Hammer Canada Operations, Registration Number 440396, FST File Number P0117-2000;**

At the request of the parties, this matter was adjourned *sine die* pending the outcome of the *Monsanto* case.

- **Cooper Industries (Canada) Inc., Registration Number 0240622, FST File Number P156-2001;**

The pre-hearing conference for May 27, 2002 was adjourned to a date to be set at the request of the parties, pending the outcome of the *Monsanto* case.

- **James MacKinnon (Labourers' Pension Fund of Central and Eastern Canada), Registration Number 573188, FST File Number P0167-2001;**

On July 10, 2002, the hearing dates were adjourned *sine die* on consent of the parties.

- **Molson Canada, Molson Breweries Pension Plan for Operating Engineers, Registration Number 0390666; Molson Canada Pension Plan for Hourly Employees in Ontario and Atlantic Canada, Registration Number 0334094; and Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086, FST File Number P0187-2002;**

The pre-hearing conference scheduled for October 28, 2002, was adjourned *sine die* on consent of the parties.



- **Bauer Nike Hockey Inc. Pension Plan for Employees of Bauer Nike Hockey Inc., Registration Number 257337, FST File Number P0189-2002;**

At the pre-hearing conference on October 28, 2002, the matter was adjourned *sine die* pending the outcome of the *Monsanto* case.



## Financial Hardship

Application to the Superintendent of Financial Services for Consent to Withdraw Money from a Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund based on Financial Hardship.

<b>FST File Number</b>	<b>Superintendent of Financial Services' Notice of Proposal</b>	<b>Comments</b>
U0223-2003	To Refuse to Consent, dated March 17, 2003	Reasons for Decision dated June 16, 2003
U0225-2003	To Refuse to Consent dated May 15, 2003	Ongoing
U0226-2003	To Refuse to Consent dated May 27, 2003	Ongoing

## Decisions to be Published

CBS Canada Co.

U0223-2003

Marshall-Barwick





## Financial Services Tribunal Decisions with Reasons

<b>INDEX NO.:</b>	FST File Number P0164-2001
<b>PLAN:</b>	Westinghouse Canada Inc. Pension Plan, Registration Number 348409 (the "Plan")
<b>DATE OF DECISION:</b>	April 3, 2003
<b>PUBLISHED:</b>	Bulletin 12/3 and FSCO website

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a proposal by the Superintendent of Financial Services (the "Superintendent") to refuse to approve the Partial Wind Up Report for Westinghouse Canada Inc. Pension Plan, Registration No. 348409, in respect of business carried on by Westinghouse Canada Inc. at its Burlington, Ontario plant;

**AND IN THE MATTER OF** a proposal by the Superintendent to refuse to approve the Partial Wind Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 348409, in respect of business carried on by Westinghouse Canada Inc. at its London, Ontario and St. Jean, Quebec plants;

**AND IN THE MATTER OF** a proposal by the Superintendent to refuse to approve the Partial Wind Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 348409, in respect of business carried on by Westinghouse Canada Inc. at its Motors Division plant;

**AND IN THE MATTER OF** a proposal by the Superintendent to refuse to approve the Partial Wind Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 348409, in respect of business carried on by Westinghouse Canada Inc. at its Beach Road plant in Hamilton, Ontario;

**AND IN THE MATTER OF** a proposal by the Superintendent to refuse to approve the Partial Wind Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 526632, in respect of business carried on by Westinghouse Canada Inc. at its Motors Division plant;

**AND IN THE MATTER OF** a hearing in accordance with subsection 89(8) of the Act.

**BETWEEN:**

**CBS CANADA CO.**

**Applicant**

- and -

**SUPERINTENDENT OF FINANCIAL SERVICES**

**Respondent**

- and -

**NATIONAL, AUTOMOBILE, AEROSPACE,  
TRANSPORTATION AND GENERAL  
WORKERS UNION OF CANADA  
(CAW-CANADA) AND ITS LOCAL 504**

**A Party in Relation to  
Certain of the Proceedings**

**BEFORE:**

Mr. Colin H.H. McNairn,  
Vice Chair of the Tribunal and Chair of the Panel  
Mr. Louis Erlichman,  
Member of the Tribunal and of the Panel  
Mr. C.S. Moore,  
Member of the Tribunal and of the Panel

**APPEARANCES:****For CBS Canada Co.**

Mr. Andrew K. Lokan

**For the Superintendent of Financial Services**

Ms. Deborah McPhail  
Mr. Mark Bailey

**For the CAW-Canada and its Local 504**

Mr. Lewis Gottheil

**DATED** at Toronto, this 3rd day of April, 2003.

Colin H.H. McNairn,  
Vice Chair of the Tribunal and Chair of the Panel  
Louis Erlichman,  
Member of the Tribunal and of the Panel  
C.S. Moore,  
Member of the Tribunal and of the Panel

**ORDER**

**WHEREAS** the parties have agreed upon terms of settlement as evidenced by the attached Minutes of Settlement;

**AND WHEREAS** the parties have consented to the terms of this Order;

The Tribunal Orders:

1. The Superintendent having agreed to withdraw the Notices of Proposal in this matter, pursuant to the Minutes of Settlement, the Superintendent shall, upon such withdrawal, refrain from carrying out the Notices of Proposal.
2. The Minutes of Settlement are hereby approved.
3. The Tribunal shall remain seized of the matters in these proceedings for the purposes of dealing with the implementation of this Order including the issue or issues referred to in paragraph 10 of the Minutes of Settlement.

**INDEX NO.:**

FST File Number P0164-2001

**PLAN:**Westinghouse Canada Inc. Pension Plan,  
Registration Number 348409 (the "Plan")**DATE OF DECISION:**

May 16, 2003

**PUBLISHED:**

Bulletin 12/3 and FSCO website

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a proposal by the Superintendent of Financial Services (the "Superintendent") to refuse to approve the Partial Wind Up Report for Westinghouse Canada Inc. Pension Plan, Registration No. 348409, in respect of business carried on by Westinghouse Canada Inc. at its Burlington, Ontario plant;

**AND IN THE MATTER OF** a proposal by the Superintendent to refuse to approve the Partial Wind Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 348409, in respect of business carried on by Westinghouse Canada Inc. at its London, Ontario and St. Jean, Quebec plants;

**AND IN THE MATTER OF** a proposal by the Superintendent to refuse to approve the Partial Wind Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 348409, in respect of business carried on by Westinghouse Canada Inc. at its Motors Division plant;

**AND IN THE MATTER OF** a proposal by the Superintendent to refuse to approve the Partial Wind Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 348409, in respect of business carried on by Westinghouse Canada Inc. at its Beach Road plant in Hamilton, Ontario;

**AND IN THE MATTER OF** a proposal by the Superintendent to refuse to approve the Partial Wind Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 526632, in respect of business carried on by Westinghouse Canada Inc. at its Motors Division plant;

**AND IN THE MATTER OF** a hearing in accordance with subsection 89(8) of the Act.

**BETWEEN:****CBS CANADA CO.****Applicant**

- and -

**SUPERINTENDENT OF FINANCIAL SERVICES****Respondent**

- and -

**NATIONAL, AUTOMOBILE, AEROSPACE,  
TRANSPORTATION AND GENERAL  
WORKERS UNION OF CANADA  
(CAW-CANADA) AND ITS LOCAL 504**

**A Party in Relation to  
Certain of the Proceedings**



**BEFORE:**

Mr. Colin H.H. McNairn,  
Vice Chair of the Tribunal and Chair of the Panel  
Mr. Louis Erlichman,  
Member of the Tribunal and of the Panel  
Mr. C.S. Moore,  
Member of the Tribunal and of the Panel

**APPEARANCES:****For CBS Canada Co.**

Mr. Andrew K. Lokan

**For the Superintendent of  
Financial Services**

Ms. Deborah McPhail  
Mr. Mark Bailey

**For the CAW-Canada and its Local 504**

Mr. Lewis Gottheil

**HEARING DATE:**

May 7, 2003

**REASONS FOR DECISION:****Background**

CBS Canada Co. ("CBS Canada"), the applicant in these proceedings, is the successor to Westinghouse Canada Inc. ("Westinghouse"). CBS requested hearings before this Tribunal in respect of several Notices of Proposal, issued by the Superintendent of Financial Services (the "Superintendent"), to refuse to approve various partial wind up reports filed by CBS Canada. One of those reports (the "London Wind Up Report") concerns the partial wind up of Westinghouse Pension Plan Registration No. 348409 (the "Hourly Plan") in respect of those members who were affected by the closure of a plant in London, Ontario (the "London plant") that was formerly owned by Westinghouse. Another of the reports (the "Hamilton Wind Up Report") concerns the partial wind up of the

Hourly Plan in respect of those members who were affected by the closure of a plant on Beach Road in Hamilton, Ontario (the "Hamilton plant") that was formerly owned by a joint venture in which Westinghouse was a participant. While other wind up reports were initially involved in these proceedings, the London Wind Up Report and the Hamilton Wind Up Report are the only ones that remain in issue given the order of this Tribunal dated March 4, 2002, disposing of a jurisdictional motion, and settlement by the parties of certain matters remaining at issue, as evidenced by minutes of settlement dated March 28, 2003 (the "Minutes of Settlement"). A brief history of the events leading up to the filing of the London and Hamilton Wind Up Reports is set out below.

In 1989, the businesses carried on at the London and Hamilton plants by Westinghouse or its joint venture were sold to Asea Brown Boveri Inc., now called ABB Inc. ("ABB") and employees at those plants transferred their employment to ABB. A predecessor union to CAW-Canada and its Local 504 ("CAW-Canada") that was the bargaining agent for those employees continued to represent them as their bargaining agent, now in connection with the collective bargaining relationship to their new employer, ABB.

During the years 1991-1992, ABB closed the London and Hamilton plants. On May 13, 1999, the Superintendent made orders, pursuant to subsection 69(1) of the *Pension Benefits Act*, as amended (the "Act"), directed to CBS Canada, requiring partial wind ups of the Hourly Plan on account of these ABB plant closures (the "London Wind Up Order" and the "Hamilton Wind Up Order"). By this time, it had been established in *Gencorp Canada Inc. v. Ontario (Superintendent of Pensions)* (1998), 39 O.R. (3d) 38 (C.A.), that a wind up of an



employer's pension plan could be triggered by the closure of a plant by a successor employer. The London Wind Up Report and the Hamilton Wind Up Report relate to the partial wind ups of the Hourly Plan that were directed by the London Wind Up Order and the Hamilton Wind Up Order, respectively.

The parties have agreed to resolve the matters remaining at issue in these proceedings on the basis set out in the Minutes of Settlement. Those Minutes of Settlement provide, among other things, that the members of the Hourly Plan affected by the ABB plant closures shall receive early retirement benefits calculated in a specified manner. For this purpose, the affected members are those members who are listed, as included in the relevant partial wind ups, in the London and Hamilton Wind Up Reports. Those lists of affected members are to be supplemented by the addition of any of twenty named members of the Hourly Plan whom the parties agree to add or who are added by order of this Tribunal. The Tribunal may add named members if CAW-Canada "establishes that their inclusion is required by law."

The Minutes of Settlement were approved by order of the Tribunal dated April 3, 2003. By the terms of that order, the Tribunal remains seized of the matters in these proceedings for the purpose of dealing with the question of which of the twenty named members of the Hourly Plan, if any, should be included in the partial wind ups occasioned by the ABB plant closures.

The parties agreed on the inclusion of ten of the named members in the relevant partial wind ups. At the hearing before the Tribunal, CAW-Canada sought to establish that nine of the remaining named members should also be included. CBS Canada resisted their inclusion, arguing that it was not "required by law," although there would be no additional cost to

the Hourly Plan (or to CBS Canada) of including any of those nine. The adjustment required by the addition of any of them will be cost-neutral because the Minutes of Settlement specify that the early retirement benefits of the other affected members will be reduced in accordance with a formula that would achieve that result.

### Analysis

We deal first with the case for inclusion of Mr. Arnold Albert in the partial wind up resulting from the closure of the London plant.

Mr. Albert testified that he was a member of the Hourly Plan who worked in the London plant, transferring his employment to ABB when the plant was sold. He worked for ABB at that location until October 1, 1992, the effective date of the partial wind up of the Hourly Plan as it relates to members employed at the London plant. Mr. Albert, who was in ill health, retired from his employment at that time, having reached age 55 on September 30, 1992, entitling him to unreduced early retirement benefits.

Mr. Albert testified that he made the decision to take early retirement when the pending closure of the London plant was announced in May of 1992. He also indicated that he would still have retired when he did if it had been announced that the plant would stay open for another year.

In our view, the circumstances of Mr. Albert do not fit the description, in the London Wind Up Order, of the members of the Hourly Plan in respect of whom the Plan is to be wound up. He cannot be said to have ceased to be employed by ABB as a result of the discontinuance of the business carried on at the London plant on or about October 1, 1992 since he stated categorically that he would have retired at or very soon after that date in any event given his ill health and his entitlement, from that date, to unreduced early retirement benefits. We must assume that the London Wind Up Order is in



accordance with the law, including the law evidenced by the terms of the Act, in the absence of any challenge to that Order. We conclude, therefore, that CAW-Canada has not established that the inclusion of Mr. Albert in the partial wind up of the Hourly Plan, as it relates to members employed at the London plant, is required by law.

Some of the members of the Hourly Plan named in the Minutes of Settlement worked at the Hamilton plant, transferred to the employment of ABB on the sale of that plant in 1989 and were subsequently offered and accepted employment by ABB at its Guelph facility, to commence on or shortly after May 27, 1991. Five such members — Gord Gittens, Harold Wilcox, Ron Buchanan, John Liberty and Dymtrow Slusarchuk — testified as to the nature of, and the transition to, that employment. Two of those members indicated, in their evidence, that three of the other named members who worked at the Hamilton plant — Donald Cameron, Bruce Carver and Fred Noto — also took up employment with ABB at its Guelph facility at the same time and on similar terms. A letter from ABB to the solicitor for Mr. Cameron, dated December 1, 1992, which was admitted in evidence, discloses the terms on which Mr. Cameron was offered and accepted employment with ABB at its Guelph facility, upon cessation of his employment by ABB in Hamilton, and indicates that seven others from the Hamilton plant, who were not mentioned by name, were offered and commenced employment at that facility under similar arrangements. On the basis of the evidence presented, we accept that all eight of the members of the Hourly Plan mentioned above (the “Hamilton Eight”) had their employment at the Hamilton plant terminated on May 23, 1991 and were re-hired by ABB, to work at its Guelph facility, commencing on or shortly after May 27, 1991, the next working day

after May 23, their last day of service at the Hamilton plant, on the following basis:

- their employment was to meet transitional requirements for training and guidance in the start-up of certain operations at the Guelph facility that had previously been carried out at the Hamilton plant,
- the need for these employment services was not, generally, expected to last beyond eighteen to twenty-four months,
- employment was to be as new employees with no transferred seniority except that previous service would be recognized for vacation entitlement purposes, and
- severance payments would be made in respect of termination of prior employment at the Hamilton plant.

The Hamilton Wind Up Order describes the members of the Hourly Plan in respect of whom the Plan is to be wound up as those who ceased to be employed by ABB as a result of the discontinuance of its Hamilton plant on or about June 30, 1991. CBS Canada maintained that the Hamilton Eight did not cease to be employed as a result of that event because they continued to be employed by ABB, through June 30, albeit at a different location. CBS Canada pointed out that neither the Hamilton Wind Up Order nor clause (d) of subsection 69(1) of the Act (which was the basis, in part, for the wind up order) describes those affected by the discontinuance of business as those whose *employment was terminated* as a result of that discontinuance, language that might fit the circumstances of this case.

In our view, the Hamilton Eight did cease to be employed by ABB as a result of the discontinuance of its Hamilton plant because their jobs at the plant (along with all the other jobs at the plant) were scheduled to be eliminated very shortly as a natural consequence of that





discontinuance. They ceased employment with ABB on May 23, 1991, receiving severance, a clear indication of cessation of employment at the instance of the employer, although all this happened in the context of a promise of other immediate employment with ABB, commencing on or about May 27, 1991. Had that promised employment carried with it a general recognition of accumulated seniority with ABB, it could be argued that, in substance, there was no break in their employment with ABB. But that was not the situation. In the circumstances of this case and, in particular, in the absence of a carryover of seniority, we believe that the new employment of the Hamilton Eight with ABB, at its Guelph facility, should remain dissociated from their previous employment with ABB at the Hamilton plant for the purposes of applying the terms of the Hamilton Wind Up Order to their situation. We conclude, therefore, that CAW-Canada has established that the inclusion of the Hamilton Eight in the partial wind up of the Hourly Plan, as it relates to members employed at the Hamilton plant, is required by law.

Our decision in this matter should not be taken to indicate that this Tribunal will necessarily review the situation of any member of a pension plan who has ceased employment at the effective date of the partial wind-up of the plan or during the period of the event giving rise to the partial wind-up whenever the plan sponsor seeks to exclude that member from participation in the partial wind up. The present case is an unusual one in that, in the end, the Tribunal has simply had to decide, within the terms of a negotiated settlement, the specific question of whether the bargaining agent for certain named plan members has successfully met the onus of establishing that they are entitled to be included in certain partial wind ups of the plan.

## Disposition

We hereby order that the following members of the Hourly Plan be added to the list of members to be included in the partial wind up of the Plan resulting from ABB's closure of the Hamilton plant, which list is set out in the Hamilton Wind Up Report; Messrs. Gord Gittens, Harold Wilcox, Ron Buchanan, Don Cameron, John Liberty, Dymtrow Slusarchuk, Bruce Carver and Fred Noto.

**DATED** at Toronto, this 16th day of May, 2003.

Colin H.H. McNairn,

Vice Chair of the Tribunal and Chair of the Panel

Louis Erlichman,

Member of the Tribunal and of the Panel

C.S. Moore,

Member of the Tribunal and of the Panel

**INDEX NO.:**

FST File Number U0223-2003

**DATE OF DECISION:**

June 16, 2003

**PUBLISHED:**

Bulletin 12/3 and FSCO website

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent") on March 17, 2003, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account (a "locked-in account") based upon financial hardship;

**AND IN THE MATTER OF** a Request for Hearing under subsection 89(8) of the Act;

**REASONS:**

1. The Applicant applied to withdraw \$6,500 from his locked-in account based upon low income in an application dated March 3, 2003.
2. On March 17, 2003, the Superintendent issued a Notice of Proposal to Refuse to Consent to the application. The Superintendent stated that he does not have the authority under law to consent to the application as the Applicant's and spouse's net assets exceed the amount he may apply to withdraw.
3. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated March 17th, 2003.

4. Section 67(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, generally prohibits the commutation or surrender of a pension, deferred pension, pension benefit, annuity or prescribed retirement savings arrangement. Section 67(5) of the Act provides an exception to the rule in circumstances of financial hardship.
5. Subsection 87(1) of Regulation 909, R.R.O. 1990, as amended (the "Regulation") prescribes the circumstances of financial hardship in which the Superintendent may consent to such applications. As noted in Point 1, the application was based on low income. Paragraph 7 of subsection 87(1) of the Regulation states that:

The owner's expected total income from all sources before taxes for the 12-month period following the date of signing the application is 66 2/3 per cent or less of the Year's Maximum Pensionable Earnings for the year in which the application is signed.

6. Section 88(2) of the Regulation sets out the formula for determining the amount the owner (the Applicant in this case) may apply to withdraw, as follows:  $A - (B-C) = D$ .  
"A" is the amount the owner may apply to withdraw.  
"B" is the market value of all assets of the applicant and the spouse....  
"C" is the total of all liabilities of the applicant and spouse....



"(B-C)" is the net assets of the applicant and spouse.

"D" is the amount an applicant is ultimately entitled to withdraw.

7. Based on the information provided by the Applicant in his application of March 3, 2003, the amount the Applicant is entitled to withdraw is "D" as referenced above. The amount the applicant may apply to withdraw is "A", \$6,095.25. The Applicant and spouse's net assets, "B-C", are \$52,700. The amount the Applicant is entitled to withdraw for the purposes of subsection 88(2) of the Regulation, "D" is \$46,604.75 (the calculation cannot result in a negative amount).
8. The Applicant submits that due to an error in the management of his financial affairs, he finds himself unable to withdraw sufficient funds from his locked-in income fund (LRIF) in order to meet his and his family needs.
9. The Applicant may have a genuine financial hardship and the claim of error appears bona fide, however the application does not meet the requirements of subsection 67(5) of the Act. The Tribunal does not have the authority to direct the Superintendent to allow an application that does not meet the strict requirements of the Regulation. As such, the Superintendent's refusal is affirmed.

## **ORDER**

The Superintendent's Notice of Proposal to Refuse to Consent, dated March 17, 2003, is affirmed and this application is dismissed.

**DATED** at Toronto this 16th day of June, 2003.

Kevin G. Ashe

Member, Financial Services Tribunal





<b>INDEX NO.:</b>	FST File Number P0150-2001
<b>PLAN:</b>	Retirement Plan for Salaried Employees of Marshall Steel Limited and Associated Companies, Registration Number 0968081 (the "Plan")
<b>DATE OF DECISION:</b>	July 7, 2003
<b>PUBLISHED:</b>	Bulletin 12/3 and FSCO website

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c. P.8 as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Partial Wind-up Report submitted by Marshall-Barwick (formerly Marshall Steel Limited) to the Superintendent of Financial Services relating to the Retirement Plan for Salaried Employees of Marshall Steel Limited and Associated Companies, Registration Number 0968081 (the "Plan");

**AND IN THE MATTER OF** a Hearing in accordance with subsection 89(8) of the Act.

**BETWEEN:**

**MARSHALL STEEL LIMITED AND ASSOCIATED COMPANIES**

**Applicant**

- and -

**SUPERINTENDENT OF FINANCIAL SERVICES OF ONTARIO**

**Respondent**

- and -

**JEFFREY G. MARSHALL**

**(A FORMER EMPLOYEE OF MARSHALL STEEL LIMITED)**

**Interested Party**

**BEFORE:**

Ms. M. Elizabeth Greville,  
Member of the Tribunal and Chair of the Panel  
Ms. Heather Gavin,  
Member of the Tribunal and of the Panel  
Mr. C.S. (Kit) Moore,  
Member of the Tribunal and of the Panel

**REPRESENTATIONS BY:**

For Marshall-Barwick Inc.:  
Mr. Sean F. Dunphy  
Mr. Gary Nachshen  
For Jeffrey G. Marshall:  
Mr. Michael Mazzuca

**REASONS FOR DECISION**

In a decision dated November 29, 2002, the Tribunal affirmed the Superintendent's Notice of Proposal dated December 12, 2000 regarding a partial wind-up report prepared on behalf of Marshall Steel Limited and Associated Companies (the "Company"), with respect to the Plan. In that decision, the Tribunal also directed the Company as administrator to file a revised partial wind-up report including Mr. Jeffrey G. Marshall in the partial wind-up group. The Tribunal made no order as to costs, but remained seized to consider the parties' written submissions regarding requests that the Tribunal award costs in this proceeding. Mr. Marshall has asked for an award of a portion of his costs in this proceeding to be paid by



the Company, in the amount of \$12,000.00, or alternatively, in an amount to be assessed by the Tribunal on a full indemnity basis. The Tribunal received written submissions from Mr. Marshall and from the Company regarding this request. The Superintendent made no request or submission regarding costs in this proceeding.

In accordance with section 24 of the *Financial Services Commission of Ontario Act, 1997*, the Tribunal's *Interim Rules of Practice and Procedure* provide that the Tribunal may order that the costs of a party to a proceeding be paid by another party or parties. The Tribunal's *Practice Direction on Cost Awards* notes that costs will not be awarded as a matter of course, and lays out some criteria for a Tribunal's decision on the award of costs.

Mr. Marshall has presented two arguments in favour of an award of costs:

1. The Company was wholly unsuccessful in these proceedings; and
2. The Company caused unreasonable delays by advancing frivolous, vexatious and manifestly unfounded positions, including the Company's
  - (a) attempt to exclude Mr. Marshall from the partial wind-up group,
  - (b) attempt to rely on Mr. Marshall's earlier signed release, and
  - (c) hostility to Mr. Marshall.

Regarding Mr. Marshall's first argument, the fact that the Company was unsuccessful does not by itself justify the awarding of costs against the Company. The Company presented reasonable arguments that Mr. Marshall's termination was a direct result of the change of control of the Company, and that he was properly excluded from the partial wind-up group. The fact that the Tribunal did not finally agree with the

Company's positions does not mean the arguments were totally without value or irrelevant to the issues being heard by the Tribunal. They were an important and necessary part of the hearing, and assisted the Tribunal in reaching its decision.

Regarding Mr. Marshall's second argument, the Tribunal was not aware of any unreasonable delays caused by the Company's positions taken during the proceeding. While the Company did attempt to exclude Mr. Marshall from the partial wind-up group, and did attempt to rely on Mr. Marshall's earlier signed release, the Tribunal did not view these efforts as frivolous, vexatious or manifestly unfounded. In fact, the arguments put forward by the Company for taking these positions, as well as Mr. Marshall's arguments to the contrary, assisted the Tribunal in reaching its decision.

Mr. Marshall has also suggested that the Company's conduct in this matter stemmed largely from its hostilities towards the Marshall family, and was contrary to its obligations as Plan administrator. In response, the Company has argued that, where it considers a claim on the pension plan assets to be an improper one, its fiduciary duty as Plan administrator could require it to contest such a claim in the interests of other Plan participants. The Tribunal agrees with the Company, that such a position could be a reasonable one for the Company to have taken in this proceeding, despite the fact that the Company's arguments were ultimately unsuccessful.

Consequently, for the reasons expressed in this decision, the Tribunal denies Mr. Marshall's request for an order for costs against the Company.



Dated at Toronto, Ontario, this 7th day of July,  
2003.

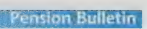
Ms. M. Elizabeth Greville,  
Member of the Tribunal and Chair of the Panel

Ms. Heather Gavin,  
Member of the Tribunal and of the Panel

Mr. C.S. (Kit) Moore,  
Member of the Tribunal and of the Panel



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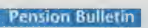
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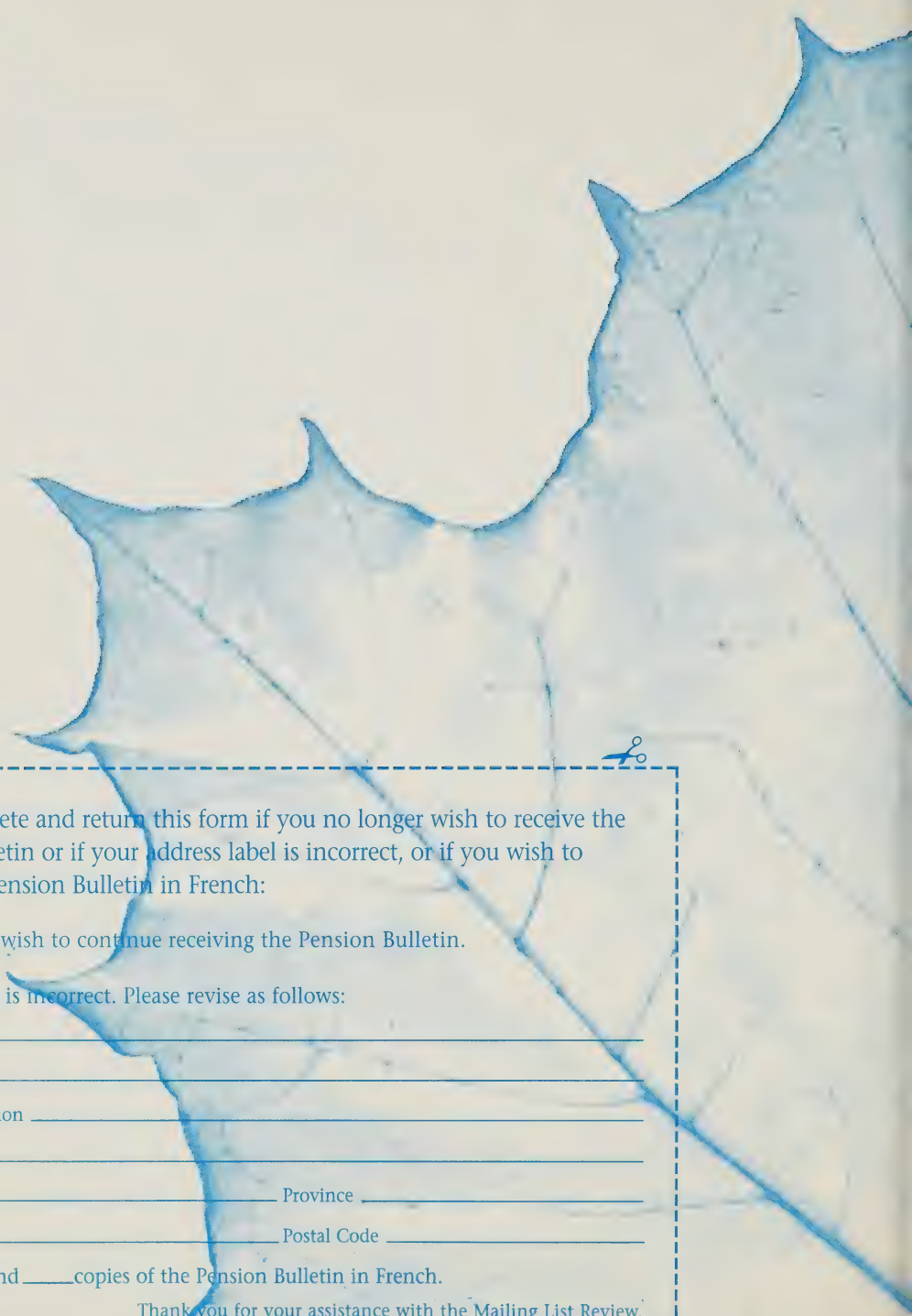


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